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15 UNITED STATES DISTRICT COURT  
16 FOR THE DISTRICT OF NEVADA

17 MICHAEL C. DELEW, individually;  
18 MICHAEL C. DELEW, as Special  
19 Administrator of the Estate of  
20 ERIN RAE DELEW; H. ROY  
21 MAYBERRY; and VICKI MAYBERRY,

22 Plaintiffs,

23 vs.

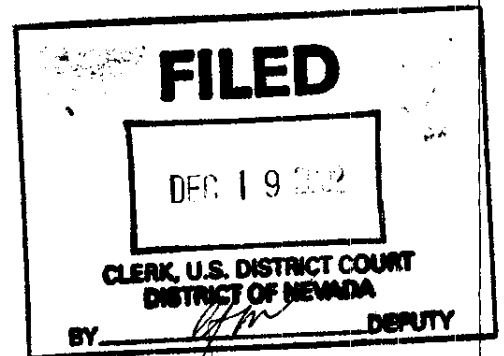
24 LAS VEGAS METROPOLITAN POLICE  
25 DEPARTMENT, et al.

26 Defendants

27 CASE NO. CV-S-00-460-RLH (LRL)

28 PLAINTIFFS' MOTION TO ENFORCE JULY 15, 2002 SANCTIONS ORDER  
(#183) AND MOTION FOR SIXTH SANCTIONS ORDER

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23 vs.

24 LAS VEGAS METROPOLITAN POLICE  
25 DEPARTMENT, et al.

26 Defendants

27 CASE NO. CV-S-00-460-RLH (LRL)

28 **PLAINTIFFS' MOTION TO ENFORCE JULY 15, 2002 SANCTIONS ORDER**  
**(#183) AND MOTION FOR SIXTH SANCTIONS ORDER**

29 Plaintiffs Michael C. DeLew, H. Roy Mayberry, and Vicki Mayberry,  
30 (collectively, "Plaintiffs" or the "DeLews"), hereby move for an order enforcing the  
31 July 15, 2002 Order, and imposing sanctions against Defendant Las Vegas Metropolitan  
32 Police Department ("Metro") and the individual Metro Defendants for not complying  
33 with the DeLews' discovery requests and the Court's orders to do so. In this Motion  
34 and the accompanying Points and Authorities, Metro and the individual Metro  
35 Defendants are referred to collectively as the "Metro Defendants." Specifically, the



DeLews ask the Court to enter the following orders:

a. (i) deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, pp. 16-17, ¶¶ A. – K., (#55), were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them; or,

(ii) in the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim;

b. as to each discovery request with which the Metro Defendants have not complied, deem the facts to which the discovery was directed to be established, and prohibit the Metro Defendants from introducing at trial evidence pertaining to the subjects or issues to which the discovery was directly, as set forth more specifically in Tables 1 and 2;

c. require the Metro Defendants to pay the reasonable expenses that the DeLews have incurred as a result of the Metro Defendants' non-compliance, including attorney's fees and costs in connection with the Rule 30(b)(6) depositions listed in Table 1, Rule 30(b)(6) Violations/Sanctions, and in preparing and filing this motion; and

d. impose other sanctions the Court deems just and proper to redress the Metro Defendants' deliberate disregard of the DeLews' discovery requests and this Court's discovery orders.

This Motion is based upon the Points and Authorities below, the attached Affidavits of Carol Leffler and Timothy M. Rastello, Tables 1 and 2, Exhibits 201-221 (*see* Appendix) and the Deposition Testimony of Counterman, Flynn, McKee, Moody, Spring, Redfairn and Zagorski (*see* Appendix).

Submitted this 17<sup>th</sup> day of December, 2002.

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## 12 POINTS AND AUTHORITIES

### 13 I. INTRODUCTION

14 The Court knows all too well the history of the DeLews' efforts to obtain  
15 discovery from the Metro Defendants. The Court has sanctioned Metro on five separate  
16 occasions, awarded monetary sanctions seven times, and in the July 15, 2002 Order  
17 (#183) ("July 15 Order") strongly admonished Metro that any "*future noncompliance*  
18 *with its discovery obligations or this court's orders will result in a recommendation*  
19 *that a default judgment be entered.*" (emphasis in original)<sup>1</sup> (Ex. 220, *Accord* Order  
20 dated Sept. 18, 2002 (#189) (affirming July 15 Order except as to recommended denial  
21 of Metro's motion for summary judgment).) Yet the Metro Defendants have persisted  
22 in defying this Court's Orders and the Federal Rules of Civil Procedure. Consider this:

---

23 <sup>1</sup> The Court has sanctioned Metro for discovery abuses and discovery resistance on  
24 seven prior occasions. On June 20, 2001, the Court sanctioned Metro \$1,500 for filing  
25 an unnecessary "emergency" motion for protective order. (#68) On August 15, 2001,  
26 the Court granted Plaintiffs' Motion to Compel and awarded Plaintiffs their costs and  
27 fees in prosecuting their motion. (#100) On September 4, 2001, the Court sanctioned  
28 Metro for abusive deposition conduct and awarded Plaintiffs their attorneys' fees and  
reporter's cost in taking the continued deposition. (#108) On March 6, 2002, the Court  
awarded Plaintiffs \$4,754 in costs and fees for prosecuting their motion to compel  
against Metro. (#132) On July 15, 2002, the Court granted Plaintiffs' Motion for  
Sanctions for Metro's Violations of Court Orders (#128) and sanctioned Metro \$5,000;  
granted Plaintiffs' Motion to Compel Responses to Second Document Requests (#129 &  
#130) and awarded \$5,000 in sanctions (#183); and granted Plaintiffs' Motion for  
Sanctions for Metro's Willful Failure to Produce Rule 30(b)(6) Witnesses (#151) and  
imposed a \$5,000 sanction. (See Order of July 15, 2002 (#183)).

1           • Although the Court ordered Metro to complete its response to Plaintiffs’  
2 First and Second Requests for Production of Documents “not later than August 9,  
3 2002,” Metro did not do so. (Ex. 211, July 15 Order at 5:8-9, 5:16-17 (#183))

4           • Despite this Court’s order that no later than August 30, 2002, Metro  
5 “produce persons most knowledgeable with respect to all subject matters  
6 identified in plaintiffs’ Rule 30(b)(6) deposition notice” (Ex. 211, July 15 Order  
7 at 5:23-25 (#183)), Metro failed to prepare and produce witnesses to testify  
8 concerning some of the most critical issues in the case.

9           • Metro affirmatively represented that Metro could not produce fatal Traffic  
10 Accident Reports and DUI Arrest Reports generated by the individual Metro  
11 Defendants during the most relevant years — 1990-1995 — because Metro  
12 destroys such reports after five years. Based on this representation, the DeLews  
13 agreed that these document requests could be narrowed significantly. But during  
14 the August 2002 Rule 30(b)(6) depositions, the DeLews discovered that Metro  
15 keeps DUI Arrest Reports for 85 years (or five years after the death of the  
16 individual), while it retains hard copies of fatal Traffic Accident Reports for 10  
17 years and microfiche copies “permanently”! *See infra* at 8-9. Metro also did not  
18 produce the reports, which would have provided the most probative evidence of  
19 the special treatment given to Officer Wagner’s wife.

20 Plaintiffs have had enough. These latest incidents of defiance and deception  
21 constitute obstruction of justice. In the July 15 Order, the Court found that “although  
22 Metro’s discovery conduct is clearly unacceptable and comes perilously close to a  
23 judicial finding of stone-walling, it does not *yet* rise to the level of willfulness, bad  
24 faith or fault” required for entry of judgment by default. (Ex. 211, July 15 Order at  
25 4:11-13 (#183)) (emphasis added) Accordingly, the Court entered monetary sanctions,  
26 warning Metro that it would be prohibited from offering evidence at trial opposing the  
27 municipal liability claim “unless and until [it] comes into full compliance” with the  
28

1 DeLews' document requests and that "future noncompliance . . . will result in a  
2 recommendation that a default judgment be entered." (Ex. 211, July 15 Order at 4:20-  
3 22 (#183))

4       The Court also recommended that the District Judge deny Metro's Motion for  
5 Summary Judgment (#163) without further briefing, and ordered that Plaintiffs were not  
6 required to respond to Metro's motion "unless and until the presiding District Judge  
7 declines to approve the ... recommendation to deny Metro's summary judgment  
8 motion." (Ex. 211, July 15 Order 5:4-7, 6:2-4 (#183)). By the time Plaintiffs received  
9 the July 15 Order, however, they had filed their response to Metro's summary judgment  
10 motion. The District Judge therefore declined to follow the Court's recommendation to  
11 deny the motion, and granted Plaintiffs "the opportunity to respond to the motions for  
12 summary judgment now that Metro has complied with Plaintiffs' discovery requests."  
13 (Ex. 220, Order dated Sept. 18, 2002 at 2:22-24 (#184)) In fact, however, as shown  
14 below, Metro did not comply with the July 15 Order, and did not furnish the discovery  
15 it was ordered to provide. Thus, although Plaintiffs filed a supplemental opposition to  
16 Metro's motion for summary judgment (#193), Metro's discovery violations  
17 substantially limited their ability to do so.

18       In essence, the Court's prior warnings and past sanctions have been wholly  
19 ineffective, as the Metro Defendants' subsequent violations demonstrate. Monetary  
20 sanctions have little impact because ultimately Defendants will be liable for Plaintiffs'  
21 attorneys' fees and costs under 42 U.S.C. § 1988, should Plaintiffs prevail at trial. The  
22 Court therefore should deem certain facts established against Metro for purposes of  
23 Plaintiffs' municipal liability claim. Similar sanctions tailored to the Metro  
24 Defendants' other violations are equally proper.

## II. ANALYSIS

### A. The Metro Defendants Have Violated The Discovery Orders.

Despite the plain and unambiguous terms of the July 15 Order, the Metro Defendants chose *not* to produce responsive documents by August 9, 2002, and Metro chose *not* to prepare and produce qualified Rule 30(b)(6) witnesses by August 30, 2002. The scope and breadth of the Metro Defendants' violations are too extensive to describe in detail here. In the interest of judicial economy, Plaintiffs will focus on certain violations of the discovery orders and refer the Court to the attachments to this motion for detailed supporting material. *See* Table 2, Document Requests Violations/Sanctions (summarizing non-compliance with document requests); Table 1, Rule 30(b)(6) Violations/Sanctions (summarizing Rule 30(b)(6) violations); and the Affidavits of Timothy M. Rastello and Carol J. Leffler.

At the outset, these violations should be assessed in light of Metro's massive resources for locating and producing responsive documents and the substantial time the Metro Defendants have had for compliance. Metro's Director of Records testified that the Records Bureau employs 200 persons. (Lang Dep. 41:9-23, 43:17-20) In addition, Metro has sophisticated computer databases capable of identifying and producing records instantaneously. (Counterman Dep. 190:20-191:12, 193:14-195:18; Lang Dep. 22:23-23:11, 24:6-14) More than 24 months have passed since Plaintiffs served their first request for documents and 16 months since the Court entered the first of three orders directing Metro to respond to that request. (*See* Orders dated August 15, 2001 (#100), March 6, 2002 (#132), and July 15, 2002 (#183)) The Metro Defendants' refusal to do so is a remarkable rebuff of the Court's authority.

#### 1. Document Requests

**1st Request No. 3:** All reports, memoranda, summaries or other documents relating to the investigation by METRO and NHP of alleged wrongful conduct committed by any named Metro Defendant or an immediate family member of a named Metro Defendant, or any documents relating to the investigation by Metro or NHP of any Metro trooper for false reporting, perjury, fraudulent investigation, false arrest, concealment, cover-up or conspiracy.

1 This request encompasses reports of Metro's Internal Affairs Bureau ("IAB")  
2 and was central to Plaintiffs' Motion for Sanctions and the June 13, 2002 hearing on  
3 that motion. (See Plaintiffs' Motion for Sanctions at 3-4 (#128), Plaintiffs' Sur-Reply  
4 at 5 (#137), and Ex. 210, June 13, 2002 Hearing Transcript at 8, 12 (#190)) The July 15  
5 Order was the Court's *third* order directing Metro to produce these documents.  
6 Nonetheless, Metro did not produce a single document in response to Request No. 3  
7 before the Court-ordered deadline of August 9, 2002. (Leffler Aff. ¶4)

8 **1<sup>st</sup> Request No. 4:** All fatal traffic collision reports investigated by Defendants  
9 during the five years preceding and five years following the preparation of the traffic  
10 collision report pertaining to Erin DeLews' death.

11 **1<sup>st</sup> Request No. 5:** All DUI arrest reports generated by each individual  
12 Defendant during the three years preceding the investigation of Janet Wagner's sobriety  
13 at the scene of Erin DeLews' death.

14 Directed squarely at the claims against the individual Metro Defendants,  
15 Document Requests Nos. 4 and 5 sought the fatal Traffic Accident Reports and DUI  
16 Arrest Reports that the individual defendants had prepared contemporaneously to Erin  
17 DeLew's death. These reports were deemed particularly important because they would  
18 present the best evidence of the procedures employed by the individual defendants in  
19 handling incidents similar to the Erin DeLew fatality. Metro represented to Plaintiffs  
20 and the Court that the fatal Traffic Accident and DUI Arrest Reports for the periods  
21 1990-1995 could not be produced because they were destroyed after five years. In their  
22 Response to the First Request for Production of Documents, the Metro Defendants  
23 stated:

24 5. That by policy and procedure the report retention  
25 policy with respect to LVMPD-Investigated fatal traffic  
26 accidents is five (5) years. Therefore, Affiant would assert  
27 that the reports for five years preceding the subject incident  
28 that are sought by Plaintiffs are no longer available.

1 (Defts' Supp'l Response to Pltf's First Request for Prod. of Doc., July 19, 2001,  
2 Greenwood Aff. ¶ 5). The Metro Defendants made the same representation in opposing  
3 the DeLews' motion to compel:

4                   Regarding Request No. 4, information surrounding  
5 fatal traffic reports from 1994 is no longer available. The  
6 retention period regarding such reports is five years.

7 (Opps. to Pltf's Mtn to Compel, July 16, 2001, at 9). Counsel for the Metro Defendants  
8 also represented to Plaintiffs' counsel that Metro could not produce the Traffic  
9 Accident and DUI Arrest Reports for 1990-95 because Metro destroys these reports  
10 after five years. (Rastello Aff. ¶ 3)

11           Based on these representations, Plaintiffs and the Court narrowed the Metro  
12 Defendants' obligations under Plaintiffs' First Request Nos. 4 and 5 to reports for the  
13 years 1996 and 1997. (Rastello Aff. ¶3; Pltfs' Reply Pts. and Auths., Aug. 8, 2001,  
14 8:21-24; (#98); Ex. 206, Order dated Aug. 15, 2001, 2:15-19 (#100)) But one year  
15 later, during the Rule 30(b)(6) depositions, the DeLews learned that Metro's Retention  
16 Policy requires that the originals of injury and fatal Traffic Accident Reports be  
17 maintained for 10 years and a microfiche copy be maintained permanently; DUI Arrest  
18 Reports must be maintained for 85 years or five years after the confirmed death of the  
19 individual. (Lang Dep. 20:3-12, 20:19-21:7) Metro therefore does have copies of the  
20 reports for 1990 to 1995. In fact, since its creation in 1980, Metro has *never* disposed  
21 of a single such report. (Lang Dep. 26:15-27:7, 49:17-20) Furthermore, Metro's  
22 retrieval system allows it to search for and retrieve these reports quickly. (Counterman  
23 Dep. 190:20-191:12, 193:14-195:18; Lang Dep. 22:23-23:11, 24:6-14) The Metro  
24 Defendants' failure to produce these documents can be characterized only as willful  
25 defiance of the Court's orders.

26 ///

27 ///

1        **1st Request No. 6:** All reports, memoranda, summaries or other documents  
2 relating to the investigation by METRO and NHP of injury or fatal traffic collisions  
3 involving any law enforcement officer or an immediate family member of a law  
enforcement officer during the five years [thirty months] preceding and five years  
[thirty months] following the investigation of Erin DeLew's death.

4        As the Court may recall, the Metro Defendants have gone to great lengths to  
5 avoid Request No. 6, which seeks documents at the heart of Plaintiffs' municipal  
6 liability custom and policy claim. Metro initially claimed that it would be too  
7 burdensome to identify and produce responsive documents. The Court rejected this  
8 argument in its August 15, 2001 Order, and directed Metro to produce the documents.  
9 (Ex. 206, Order dated Aug. 15, 2001, 2:13-23 (#100))

10       Metro moved for reconsideration. Metro asserted that it had identified 55 reports  
11 as a result of a department-wide e-mail inquiry, but resisted doing more, again claiming  
12 the request was too burdensome. (Metro Mtn. for Reconsid. at 11-12, Aug. 29, 2001  
13 (#106))<sup>2</sup> Metro attached the Affidavit of Lt. John Thornton, who detailed the steps that  
14 would be necessary to produce the requested documents. (*Id.*) The Court re-affirmed  
15 its earlier Order, but narrowed the time period from ten years to five years. (Ex. 207,  
16 Order dated December 3, 2001 at 4:10-13 (#124)) When Metro still refused to comply,  
17 Plaintiffs filed the Motion for Sanctions that led to the July 15 Order. The Order  
18 expressly directed Metro to "complete the document production responsive to  
19 Plaintiffs' First Request for Production of Documents not later than August 9, 2002."  
20 (Ex. 211, July 15 Order at 5:8-10 (#183)) Despite the plain language of that Order, the  
21 Metro Defendants did not undertake the steps Lt. Thornton had stated would be  
22 necessary to identify and produce these documents. (Rastello Aff. ¶7-8; Moody Dep.  
23 87:9-17, 88:6-13, 93:7-10)

24       This persistent non-compliance is remarkable in view of the July 15 Order,  
25 which states:

---

26       <sup>2</sup> Metro overstated its burden by asserting it would have to review each and every  
27 traffic collision report. In reality, Metro was required to review only "fatal and injury"  
28 traffic collision reports, which were easily identifiable by the coding system used by all  
Nevada police agencies. (Countermand Dep. 190:20-191:12, 193:14-195:18; Lang Dep.  
22:23-23:11, 24:6-14)



1 The court understands that Metro's burden of production has  
2 been far from light. In balancing plaintiffs' need for the  
3 discovery, however, against Metro's burden of production,  
4 the court has found, and continues to find, that plaintiffs'  
5 need for the discovery, especially in relation to their  
6 municipal liability claim, outweighs the burden imposed on  
7 Metro. Though its burden has been heavy, Metro has had  
8 more than ample time to meet its discovery obligations,  
9 especially in light of its failure to undertake its search for  
10 documents promptly when ordered to do so. Moreover, the  
11 sluggish pace at which Metro has produced discovery has  
12 caused plaintiffs considerable prejudice.

13 (Ex. 211, July 15 Order at 3:5-13 (#183)) Even after the July 15 Order, the Metro  
14 Defendants failed to produce a single Traffic Accident Report or DUI Arrest Report  
15 involving any off-duty Metro officer or immediate family member of a Metro officer.  
16 Instead, they referred Plaintiffs to the Internal Affairs Bureau files, which obviously  
17 would not disclose traffic collisions or DUI arrests involving immediate family  
18 members. (Rastello Aff. ¶7-11; Ex. 212, Metro Defendants' Sixth Supp'l Response  
19 served July 24, 2002) The Metro Defendants thus far have succeeded in stacking the  
20 deck and substantially impairing Plaintiffs' ability to prove their case at trial.

21 **Unredacted Copies.** At the June 13, 2002 hearing, the Court expressly directed  
22 the Metro Defendants to produce unredacted, not redacted, documents.

23 THE COURT: Do you understand today that the Court's  
24 order, the protective order, applies to any and all documents  
25 produced by Metro?

26 MR. ANGULO: It was -- no, Your Honor.

27 THE COURT: You don't?

28 MR. ANGULO: It's not my understanding. \* \* \* If the  
Court tells me today that it does, I have no problem. We  
have those documents in an unredacted form. We will send  
them to be copied and get them to the plaintiff's counsel as  
quickly as they can be copied by --

THE COURT: Well, indeed it does.

MR. ANGULO: Okay.

(Ex. 210, June 13, 2002 Hearing Transcript at 30 (#190))

1 Despite the Court's unequivocal direction and Metro's counsel's  
2 acknowledgment, the Metro Defendants did *not* comply with the Court's plain,  
3 unambiguous ruling. They never produced unredacted copies of the fatal traffic  
4 collision reports that they had produced in response to Request No. 4. (Leffler Aff. ¶5)  
5 Similarly, the Metro Defendants did not produce unredacted copies of the DUI Arrest  
6 Reports in response to First Request No. 5. (Leffler Aff. ¶6)

7 In response to Plaintiffs' First Request No. 6, the Metro Defendants never  
8 provided unredacted copies of the requested traffic accident reports. (Leffler Aff. ¶7)  
9 The Metro Defendants produced only redacted copies of the 55 injury or fatal accident  
10 reports identified via the e-mail inquiry, *see supra* at 9, thereby withholding the contact  
11 information for the citizens involved in collisions with Metro "insiders." (Rastello Aff.  
12 ¶8)

13 With respect to Plaintiffs' Second Requests, in its July 15 Order, the Court  
14 ordered the Metro Defendants "not later than August 9, 2002" to "produce the  
15 documents called for in plaintiffs' Second Request Production Nos. 1, 6, 10, 11, 12, 13,  
16 14, 15, 17, 18, 19, 20, 21, 24, 25, 26 and 32." (Ex. 211, July 15 Order at 5:16-17  
17 (#183)) The Metro Defendants inexplicably all but ignored most of the Court's Order.  
18 For example, the Metro Defendants did not produce any of the following:

- 19 • the personnel files for Defendants Roshak, Thornton, or Pribyl (No. 6)  
20 (they produced Keller's file *after* the Rule 30(b)(6) deposition);
- 21 • a single "Notice of Claim" (No. 14);
- 22 • a single Accident Review Board Report (No. 17);
- 23 • a single document from the Risk Manager's Office (No. 18);
- 24 • the annual inspections of the IAB for seven years (No. 21);
- 25 • a single disciplinary hearing record (No. 24);
- 26 • a single traffic collision report involving any individual defendant or their  
27 immediate family members (No.25);
- 28

- a single DUI arrest report involving a Metro insider (No.26); and
- a privilege log of withheld documents (No. 32), even though their Rule 30(b)(6) witness acknowledged that documents had been withheld.

(Moody Dep. 70:11-71:6, 84:4-17, 96:18-25; Leffler Aff. ¶¶8-9, 11-12, 15-19) In addition, they did not even attempt to review the IAB files for responsive documents (Nos. 19 and 20), but instead provided Plaintiffs with a cryptic and non-descriptive IAB log. (Rastello Aff. ¶¶11-12; Leffler Aff. ¶¶13-14)

As these incredulous examples illustrate, the Metro Defendants have blatantly defied this Court's orders to respond to Plaintiffs' document requests. These violations, together with the Metro Defendants' other violations, are summarized in Table 2, Document Requests Violations/Sanctions and the Rastello and Leffler Affidavits.

## 2. Rule 30(b)(6) Depositions

Metro's failure to produce prepared witnesses for the Rule 30(b)(6) depositions started with the very first category, the all important subject of Metro's policy of self-investigation of traffic and criminal incidents involving Metro officers and their immediate family members.

**Category A:** Metro's policy, procedure and practice pertaining to investigating traffic and criminal incidents involving Metro officers and their immediate family members from 1990 to the present including, but not limited to, the interpretation of the LVMPD Traffic Bureau Enforcement & Accident Investigations Manual and the LVMPD Manual

Metro produced Deputy Chief Zagorski in response to this request. He was unable to answer key questions regarding this policy. Specifically, he could not explain two 1995 Orders: Order 62-95, which rescinded the policy of self-investigation, and Order 73-95, which reinstated this policy a few months later. Concerning Order 62-95, Deputy Chief Zagorski testified as follows:

Q. This order went out on August 8, 1995?

A. Yes.

Q. It basically amended the Department Manual, Section 5/103.29. Would you agree with that?

1           **A. It amended it, yes, to include the paragraph**  
2 **you just read.**

3           Q. You don't recall how this particular PO originated?

4           **A. No, sir.**

5           Q. You haven't reviewed any files or documents related to how this  
6 came about?

7           **A. No, sir.**

8           Q. You have no personal recollection of how it came about?

9           **A. No.**

10 Deputy Chief Zagorski was equally uninformed regarding Order 73-95:

11           Q. Do you know what precipitated the change reflected in PO-73-95?

12           **A. No, sir.**

13           Q. Have you reviewed any files in the Office of Management and  
14 Budget regarding this PO-73-95?

15           **A. No, I have not reviewed any files.**

16           Q. Both of these Procedural Orders, PO-62-95 and 73-95 are signed  
17 by Undersheriff Winget?

18           **A. Yes.**

19           Q. Did you speak with Undersheriff Winget regarding these POs in  
20 preparation for today's deposition?

21           **A. No, sir.**

22           Q. Is he still available at the department?

23           **A. He's the Undersheriff.**

24 Zagorski Dep. 28:12 – 31:8

25           **Category T:** The radio channel and other contact with Metro officers on  
26 September 27, 1994, including the tape or log of all such contact and including, but not  
27 limited to, the interpretation of the LVMPD Communication Center Event Search  
28 (attached as Exhibit A).

**Category U:** The LVMPD Audio Tape of the September 27, 1994 dispatch.

          To comply with Categories T and U, Metro was obligated to prepare and produce  
the person most knowledgeable regarding the radio channel and other contact with  
Metro officers on September 27, 1994, including the audio tape and logs of all such  
contacts. The witness Metro designated for these categories, Sharon Counterman, could  
not answer whether the original or backup copy of the magnetic tape recordings made

1 the night Erin died still exists, and could not describe what happened to the tapes.  
2 (Counterman Dep. 173:13 – 174:9) Counterman did not even check to see whether  
3 either tape still exists:  
4

5 Q. What happened to the two magnetic tapes, the primary and backup  
6 tapes, for September 27, 1994?

7 A. **I have no knowledge of what happened to them back then.**

8 Q. Did you make any inquiries?

9 A. **I looked to see if we had anything. We didn't have anything.**

10 Q. Where did you look?

11 A. **In our storage room where we've got our copies of stuff.**

12 Q. Did you look in the hold vault?

13 A. **No. And that's something that I haven't done. I looked for  
14 our copy because I thought we were making cassette copies back then.**

15 Q. So, as you sit here today, you have not looked into the cabinet  
16 where the magnetic tapes are put on hold to see if either the primary or  
17 backup magnetic tape of September 27, 1994, still exists?

18 A. **No. We wouldn't have a backup. If we had anything, it would  
19 be a primary if it even exists. No, and I did not ask -- we didn't go  
20 through all that. I was just looking for this [cassette] copy for this  
21 deposition.**

22 (Counterman Dep. 173:13 – 174:9) (emphasis added)

23 **Category CC:** All cellular telephone records from September 27, 1994 to  
24 September 30, 1994 for all named Metro Defendants and all Metro personnel involved  
25 in any aspect of the DeLew fatal traffic collision investigation.

26 To answer questions regarding the Metro Defendants' cell phone calls on the  
27 evening of September 24, 1994, Metro produced Deputy Chief Richard McKee. He was  
28 unprepared to answer the most basic questions regarding the bills, and did not make the  
most basic inquiries to obtain the information. For instance, he could not identify the  
persons who made or received calls, the phone numbers listed, or the notations on the  
bills:

Q. Okay. And on the first page [McKee Exhibit 1] there's a note to  
Bob from Kathie.

A. **Uh-huh.**

Q. Who is Bob? Do you know who Bob is?

A. **No, I don't know.**

1 Q. Okay. And do you know who Kathie is?

2 A. **No, I do not.**

3 Q. And there's a reference to three telephone numbers. Do you  
4 know whose numbers those are?

5 A. **No, I do not.**

6 Q. And do you know what the reference on page one of Exhibit 1  
7 that states "no calls during that time" means?

8 A. **No, I do not.**

9 McKee Dep. 47:10-24.

10 Deputy Chief McKee also could not identify basic information such as account  
11 numbers or users of particular phones. (McKee Dep. 48:18 – 49:14) Finally, he made  
12 no effort to ascertain the information necessary for an understanding of the content of  
13 the bills:

14 Q. Okay. Do you know whose handwriting that is on page three of  
15 five of McKee Exhibit 1 where it states "Bill Johnson"?

16 A. **No, sir.**

17 Q. Okay. Did you attempt to determine whose handwriting that is?

18 A. **No, sir.**

19 Q. Okay. All right. And then down below on page three there calls  
20 8 through 16 are listed. Do you see that?

21 A. **Uh-huh. Yes, sir.**

22 \* \* \*

23 Q. Okay. Did you make any inquiry to find out if there were seven  
24 calls that were redacted?

25 A. **No, sir.**

26 Q. Okay. Similarly, did you make any inquiries to determine  
27 whether or not there were any calls after call number 16?

28 A. **No, sir.**

Q. Okay. Do you know whether or not Bill Johnson was assigned  
the cell phone number 702-379-9392?

A. **No, sir.**

Q. Do you recognize, do you know any of the telephone calls that  
were made or received from numbers 8 through 16 on page three of  
McKee Exhibit 1?

A. **The only thing I would be able to say, that the 229, the very  
first number, 3810, that's dispatch.**

Q. Okay.

A. **But other than that, I have no idea.**

Q. Okay. Did you make any inquiry of Bill Johnson to ask him?

A. **No.**

McKee Dep. 51:5 – 54:7.

1 In fact, the foregoing are only a few examples of Metro's Rule 30(b)(6)  
2 violations. Many other violations are summarized in Table 1, Rule 30(b)(6)  
3 Violations/Sanctions, which lists the Rule 30(b)(6) designees, the categories for which  
4 they were designated, and a portion of their deposition testimony illustrating their lack  
5 of preparedness on those different issues.

6 These depositions establish that Metro violated its obligations under Rule  
7 30(b)(6) and the July 15 Order. "Producing an unprepared witness is tantamount to a  
8 failure to appear" at a deposition. *United States v. Taylor*, 166 F.R.D. 356, 363  
9 (M.D.N.C.), *aff'd*, 166 F.R.D. 367 (1996). Organizations like Metro must designate  
10 knowledgeable persons for Rule 30(b)(6) depositions and prepare them to answer  
11 questions about the designated subject matter fully and unevasively. If the designated  
12 persons do not have personal knowledge of these matters, the organization must  
13 "prepare the designees so that they may give knowledgeable and binding answers for  
14 the [organization]." *Taylor*, 166 F.R.D. at 361. *Accord DeToy v. City and County of*  
15 *San Francisco*, 196 F.R.D. 362, 365-66 (N.D. Cal. 2002).

16 Indeed, another district court recently confirmed the nature of Rule 30(b)(6)'s  
17 requirements:

18 Fabiano's counsel is quite simply wrong in his assertion that  
19 the Fabiano sons did not have a duty to educate themselves  
20 about the 30(b)(6) topics. Indeed, the law is well-  
21 established that a 30(b)(6) deponent does have an  
affirmative obligation to educate himself as to the matters  
regarding the corporation.

22 Rule 30(b)(6) explicitly requires [a company] to have  
23 persons testify on its behalf as to all matters known or  
24 reasonably available to it and, therefore, implicitly requires  
25 persons to review all matters known or reasonably available  
26 to it in preparation for the 30(b)(6) deposition. This  
27 interpretation is necessary in order to make the deposition a  
28 meaningful one and to prevent the "sandbagging" of an  
opponent by conducting a half-hearted inquiry before the  
deposition but a thorough and vigorous one before the trial.

1 *Calzaturificio v. Fabiano Shoe Company, Inc.*, 201 F.R.D. 33, 36 (D. Mass. 2001).

2 Here, however, Metro made no effort to comply with these requirements, flaunting this  
3 Court's orders and thwarting the DeLews' reasonable discovery requests.

4  
5 **B. The Metro Defendants' Discovery**  
6 **Violations Warrant Severe Sanctions.**

7 Rule 37(b)(2) authorizes the Court to impose sanctions when a party "fails to  
8 obey an order to provide or permit discovery." These sanctions must be tailored to fit  
9 the offense, but include entering a default judgment against the offending party;  
10 refusing to allow the disobedient party to oppose or support designated claims or  
11 defenses; and establishing certain designated facts in accordance with a party's claim.  
12 *Lewis v. Telephone Employees Credit Union*, 87 F.3d 1537, 1558 (9<sup>th</sup> Cir. 1996);  
13 Fed.R.Civ.P. 37(b)(2).

14 Similarly, Rule 37(d) provides for substantial sanctions where a party fails to  
15 produce a proper Rule 30(b)(6) witness. The court may order that designated facts be  
16 deemed established; refuse to allow the disobedient party to introduce evidence  
17 opposing claims or supporting defenses; strike pleadings; or enter a default judgment.  
18 *CFTC v. Noble Metals Int'l, Inc.*, 67 F.3d 766, 771 (9<sup>th</sup> Cir. 1995) (affirming order that  
19 all allegations of complaints would be deemed established).

20 Rule 37(b)(2) sanctions (a) assure that a party will not benefit from its own non-  
21 compliance; (b) elicit compliance with the order; and (c) deter "flagrant disobedience  
22 and callous disregard" of discovery requests. *United States v. Sumitomo Marine & Fire*  
23 *Ins. Co.*, 617 F.2d 1365, 1370 (9<sup>th</sup> Cir. 1980). Sanctions "must be applied diligently  
24 both 'to penalize those whose conduct may be deemed to warrant such a sanction, [and]  
25 to deter those who might be tempted to such conduct in the absence of such a  
26 deterrent.' " *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 763-64 (1980) (citation  
27 omitted). Where, as here, a party's discovery violations persist after "months of delays  
28



1 and failures to comply,” severe sanctions are essential to serve the purposes of Rule  
2 37(b). *Sumitomo*, 617 F.2d at 1369-70.

3 At a minimum, the Court should confirm that Metro is precluded from offering  
4 evidence at trial opposing the municipal liability claim. Under the July 15 Order, Metro  
5 cannot offer this evidence “unless and until [it] comes into full compliance regarding  
6 Plaintiffs’ First and Second Requests for Production of Documents.” (Ex. 211, July 15  
7 Order at 5:2-3) As demonstrated above, Metro has *not* met this condition.  
8 Accordingly, the July 15 Order is self-executing and Metro is barred from offering any  
9 evidence in opposition to the municipal liability claim.

10 But Metro’s conduct is so egregious, it surely calls for a more serious sanction.  
11 Despite this Court’s prior sanctions and its express warning concerning the  
12 consequences of continued non-compliance, Metro chose *not* to respond to the  
13 document requests at issue and *not* to comply with its Rule 30(b)(6) obligations. This  
14 misconduct justifies an order deeming the following facts established for purposes of  
15 Plaintiffs’ municipal liability claim: Metro’s policies and customs, as identified in  
16 Plaintiffs’ Amended Complaint, pp. 16-17, ¶¶ A. – K., (#55), were a moving force or  
17 cause of the alleged constitutional violations and constitute deliberate indifference to  
18 the constitutional rights of citizens subjected to them.

19 In addition, the Metro Defendants’ other discovery violations are equally serious  
20 and equally sanctionable. For each of the other document requests and Rule 30(b)(6)  
21 categories that remain unanswered, the Court should (a) rule that the facts to which the  
22 discovery was directed have been established; and (b) preclude the Metro Defendants  
23 from offering any evidence on the issue. *See* Tables 1 and 2. These sanctions are  
24 tailored to fit the discovery violations, and are warranted to cure the prejudice that the  
25 DeLews have suffered. *Lewis*, 87 F.3d at 1558; *Adriana Int’l Corp. v. Kunz*, 913 F.2d  
26 1406, 1412 (9<sup>th</sup> Cir. 1990). To assist the Court, Tables 1 and 2 identify each of the  
27  
28

1 discovery requests with which the Metro Defendants have not complied, and the  
2 evidentiary and issue sanctions that should be granted.

3       The Metro Defendants' discovery violations have directly impaired the DeLews'  
4 efforts to prepare their case. Many of the document requests with which the Metro  
5 Defendants have refused to comply and the Rule 30(b)(6) categories for which Metro  
6 did not produce a properly-prepared witness are essential to the DeLews' ability to  
7 prove their constitutional violation claims and their municipal liability claim. (Ex. 211,  
8 July 15 Order 3:14-15 (#183) (finding that "Metro's failure to produce documents and  
9 knowledgeable Rule 30(b)(6) witnesses has . . . prevented plaintiffs from garnering the  
10 evidence, if such exists, to prove its case at trial")). *Accord DeToy*, 196 F.R.D. at 365.

11       In other words, the Metro Defendants' non-compliance "constituted a clear  
12 interference with the plaintiffs' ability to prove the claims and to obtain a decision in  
13 the case. The existence of prejudice is palpable." *Wanderer v. Johnson*, 910 F.2d 652,  
14 656 (9<sup>th</sup> Cir. 1990). *Accord Commodity Futures Trading Comm'n v. Noble Metals Int'l,*  
15 *Inc.*, 67 F.3d 766, 771 (9<sup>th</sup> Cir. 1995) (defendants' "willful refusal to comply with the  
16 Court's order severely prejudiced the government's ability to make its case"); *Adriana*,  
17 913 F.2d at 1412 (prejudice established by defendants' "repeated failure . . . to appear  
18 at scheduled depositions compounded by their continuing refusal to comply with court-  
19 ordered production of documents").

20       Moreover, the Court has not only considered less drastic sanctions, the Court has  
21 actually imposed them *seven* other times — all to no avail. *See supra* at 4 n.1. The  
22 Court expressly warned Metro that "future noncompliance with its discovery  
23 obligations or this court's orders will result in a recommendation that a default  
24 judgment be entered." (July 15 Order at 4:21-23) Metro nonetheless chose to defy this  
25 warning.

26       Although this flagrant disregard of the July 15 Order warrants entry of default  
27 judgment on the municipal liability claim, Plaintiffs are not seeking this severe sanction  
28

1 for various appellate and strategic reasons. Instead, Plaintiffs are willing to accept the  
2 evidentiary and issue sanctions they have requested, in an effort to remedy the gross  
3 prejudice created by the Metro Defendants' discovery violations and to advance the  
4 case to trial promptly. Ninth Circuit cases furnish ample authority for this request.

5 For instance, in *Wanderer*, the Ninth Circuit upheld a \$25 million default  
6 judgment because the defendants had been expressly warned that such a sanction was  
7 possible, yet persisted in 'exhibit[ing] complete indifference to these warnings, the  
8 order of [the] court, and their discovery obligations.' 910 F.2d at 655. Similarly, in  
9 *CFTC*, the Ninth Circuit affirmed a sanction order that deemed the allegations of the  
10 complaint to be established because the defendants had repeatedly refused to designate  
11 a Rule 30(b)(6) witness. 67 F.3d at 772. Here, the Metro Defendants' violations are as  
12 egregious as those at issue in *Wanderer* and *CFTC*, yet the sanctions the DeLews seek  
13 are far less severe. Thus, *Wanderer* and *CFTC* fully support these sanctions.

### 14 III. CONCLUSION

15 Plaintiffs respectfully urge the Court to enter the following orders:

16 a. (i) deem it established for the purposes of Plaintiffs' municipal liability  
17 claim that Metro's policies and customs, as identified in Plaintiffs' Amended  
18 Complaint, pp. 16-17, ¶¶ A. – K., (#55), were a moving force or cause of the alleged  
19 constitutional violations and constitute deliberate indifference to the constitutional  
20 rights of citizens subjected to them; or,

21 (ii) in the alternative, prohibit Metro from offering evidence at trial  
22 opposing Plaintiffs' municipal liability claim;

23 b. as to each discovery request with which the Metro Defendants have not  
24 complied, deem the facts to which the discovery was directed to be established, and  
25 prohibit the Metro Defendants from introducing at trial evidence pertaining to the  
26 subjects or issues to which the discovery was directed, as set forth more specifically in  
27 Tables 1 and 2;  
28

1 c. require the Metro Defendants to pay the reasonable expenses that the  
2 DeLews have incurred as a result of the Metro Defendants' non-compliance, including  
3 attorney's fees and costs in connection with the Rule 30(b)(6) depositions listed in  
4 Table 1, Rule 30(b)(6) Violations/Sanctions, and in preparing and filing this motion;  
5 and

6 d. impose other sanctions the Court deems just and proper to redress the  
7 Metro Defendants' deliberate disregard of the DeLews' discovery requests and this  
8 Court's discovery orders.

9 Dated this 19th day of December, 2002.

10  
11 By Timothy M. Rastello  
12 Daniel T. Foley, Esq.  
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**ATTORNEYS FOR PLAINTIFFS**



AFFIDAVIT OF TIMOTHY M. RASTELLO

STATE OF COLORADO )  
COUNTY OF BOULDER )ss.

TIMOTHY M. RASTELLO, being first duly sworn, deposes and states as follows:

1. I am a partner in the law firm of Holland & Hart LLP. I am one of the attorneys retained to represent Michael C. DeLew, individually, Michael C. DeLew, as Special Administrator of the Estate of Erin Rae DeLew, H. Roy Mayberry and Vicki Mayberry in this case, and I am personally competent to testify to the matters contained herein.

2. This Affidavit is offered in support of Plaintiffs' Motion to Enforce July 15, 2002 Sanctions Order (#183) and Motion for Sixth Sanctions Order.

3. After Plaintiffs propounded their First Request for Production of Documents in December 2000, Metro's counsel, Peter Angulo, represented to me that Metro could not produce Traffic Accident Reports and DUI Arrest Reports during the most relevant years — 1990-1995 — because Metro destroys such reports after five years. Based on these representations, I narrowed Plaintiffs' First Request Nos. 4 and 5 to reports to the years 1996 and 1997. (Pltfs' Reply, Aug. 8, 2001, n. 2, 8:21-24 (#98)) The Court accepted and adopted these narrowed requests in its Order of August 15, 2001 (Ex. 206, Order dated Aug. 15, 2001, 2:15-19 (#100)).

4. During the August 2002 Rule 30(b)(6) deposition of Tracy Lang, Metro's person most knowledgeable ("PMK") for record retention, I was stunned to learn that Metro maintains DUI Arrest Reports for 85 years (or five years after death of individual) and Traffic Accident Reports permanently on microfiche (and hard copies for 10 years). (Lang Dep. 20:3-12, 20:19-21:2; Ex. 204) Metro never did produce the originally requested Traffic Accident Reports or DUI Arrest Reports for the years 1990-

1 1994, which would have provided the most probative evidence of the Metro  
2 Defendants' standard operating procedures in other DUI and fatal traffic cases and the  
3 special treatment given to Officer Wagner's wife.

4 5. Although Metro produced Traffic Accident Reports and DUI Arrest  
5 Reports for 1996-1997, it provided only redacted copies of these reports. During the  
6 June 13, 2002 hearing on Plaintiffs' three discovery motions, Plaintiffs argued that  
7 Metro's redaction of these Fatal Traffic Accident Reports and DUI Arrest Reports was  
8 improper and in violation of the Court's prior discovery orders and Protective Order.  
9 Metro's counsel stated that he did not understand that the Court's Protective Order  
10 applied to such documents, even though the Protective Order expressly states it applies  
11 to "all" documents produced in the case. The Court unambiguously advised Metro's  
12 counsel that it did apply and that Metro should produce the unredacted reports.  
13 (Ex. 210, Hearing Trans. June 13, 2002 at 30 (#190)) Metro's counsel stated that he  
14 would do so. (*Id.*)

15 6. Despite the Court's admonition during the hearing, its subsequent Order  
16 of July 15, 2002 (the "July 15 Order"), and Metro's counsel's representation that Metro  
17 would promptly comply, Metro did not produce unredacted copies of the previously-  
18 produced redacted Fatal Traffic Accident Reports and DUI Arrest Reports in Response  
19 to the First Requests Nos. 4, 5 and 6. (Leffler Aff. ¶¶5, 6, and 7; Ex. 210, Hearing  
20 Trans. June 13, 2002 at 30 (#190)).

21 7. As this Court is no doubt aware, perhaps the most critical documents in  
22 the case are the reports of other traffic collisions and DUI incidents involving Metro  
23 off-duty officers and their immediate family members. Plaintiffs have gone to great  
24 lengths to obtain documents responsive to Request No. 6, which seeks documents at the  
25 heart of Plaintiffs' municipal liability custom and policy claim. Metro initially claimed  
26 that it would be too burdensome to identify and produce responsive documents. The  
27 Court rejected this argument in its August 15, 2001 Order, and directed Metro to  
28

produce the documents. (Ex. 206, Order dated Aug. 15, 2001) Metro moved for reconsideration. Metro asserted that it had identified 55 reports as a result of a department-wide e-mail inquiry, but resisted doing more, again claiming the request was too burdensome. (Metro Motion for Reconsideration at 11-12, Aug. 29, 2001 (#106)) Metro attached the Affidavit of Lt. John Thornton, who explained the steps that would be necessary to produce the requested documents. The Court re-affirmed its earlier Order, but narrowed the time period from ten to five years. (Ex. 207, Order dated December 3, 2001)

8. When Metro still refused to comply, Plaintiffs filed the Motion for Sanctions that led to the July 15, Order. Despite the plain language of that Order, the Metro Defendants still have *not* produced these documents. Lieutenant Moody was Metro's designated Rule 30(b)(6) witness on this subject matter. During his deposition, Lt. Moody acknowledged that the steps Lt. Thornton identified as necessary to identify and produce the requested documents had not been undertaken, despite the Court's reduction of the discoverable time period from ten years to five years. (Moody Dep. 87:9-17, 88:6-13, 93:7-10) Moreover, the Metro Defendants have refused to produce unredacted copies of the 55 reports identified via the e-mail inquiry, in direct violation of the Court's express order to do so. (Ex. 210, June 13, 2002 Hearing Transcript at 17-18 (#190); Leffler Aff. ¶17) Consequently, Metro has never disclosed the contact information of persons similarly situated to the DeLew family (*i.e.*, citizens involved in traffic collisions with Metro off-duty officers and their family members), despite the Court's plain orders to do so. It is worth noting that Metro employs 200 people in its Records Bureau and that it had ample resources (both human and computer) to identify and produce responsive documents. (Lang Dep. 22:23-23:11, 41:9-23, 43:17-20)

9. Three weeks prior to the Rule 30(b)(6) depositions, I asked Metro's counsel to identify the Metro person or family member listed in the 55 redacted reports so that I could study the reports before the PMK depositions and prepare my questions



1 regarding them. (See TMR letter to Peter Angulo dated Aug. 7, 2002, Ex. 217)  
2 Mr. Angulo did not respond to my inquiry until more than two months later, which was  
3 six weeks *after* the Court-ordered deadline for completing the 30(b)(6) depositions.  
4 (See Letter from Peter Angulo to Timothy Rastello dated Oct. 11, 2002, Ex. 221)

5 10. Metro also refused to produce the requested IAB files by August 9, 2002,  
6 as ordered by the Court. Metro had to have known that in order to properly respond to  
7 the discovery request and the Court's Orders, it would need to briefly review each file  
8 to determine whether it fairly fell within the boundaries of the document request. This  
9 is required because the IAB Logs themselves are so cryptic, it is not possible in most  
10 cases to determine the nature of the underlying misconduct. (Flynn Dep. 66:4-67:11,  
11 Moody Dep. 78:16-79:1) I have attached to this affidavit as Exhibit 201 a few sample  
12 pages of the IAB Logs. As the Court can see, and as Metro's Rule 30(b)(6) witnesses  
13 acknowledged, one would need to briefly review each file to determine its  
14 discoverability under the Court's Order. (Flynn Dep. 66:4-67:11, Moody Dep. 78:16-  
15 79:1)

16 11. However, rather than undertake the necessary review, as the Court so  
17 much as ordered for yet the third time in the July 15 Order, Metro sent the Logs to  
18 Plaintiffs' counsel, stating that Plaintiffs' counsel could review the Logs and determine  
19 for itself which files fell within the discovery requests. Metro knew full well that such  
20 a determination could not be made from the Logs themselves. (Flynn Dep. 66:4-67:11,  
21 Moody Dep. 78:17-79:1) Yet, it flatly refused to undertake the necessary review.

22 12. With the impending Court-ordered deadlines for production of documents  
23 (August 9) and for completion of the Rule 30(b)(6) depositions (August 30), I became  
24 alarmed that Metro, once again, would prevent Plaintiffs from obtaining crucial  
25 discovery needed to establish Plaintiffs' constitutional violation claims. Consequently,  
26 I faxed letters to Metro's counsel, requesting that Metro at least produce the two-page  
27 "Brief of Complaint" for files I had randomly selected from the IAB list. (See Letter  
28

1 from Timothy Rastello to Peter Angulo dated Aug. 7, 2002, Ex.216) I informed Metro  
2 that expeditious production of these two-page "Briefs of Complaint" was required in  
3 order to permit Plaintiffs to obtain, review, and use the IAB files during the upcoming  
4 Rule 30(b)(6) depositions, which had to be completed by August 30, 2002.

5 13. The parties had scheduled the Rule 30(b)(6) depositions from August 20,  
6 2002 through August 30, 2002, in accordance with the July 15 Order. At the end of the  
7 deposition on August 27, Metro produced some of the requested Briefs of Complaints  
8 for 1998 and 1999. Of course, at this point, it was too late for me to read, analyze, and  
9 use the Briefs of Complaints or any related IAB files during the remaining Rule  
10 30(b)(6) depositions. In addition, in its August 27 production, Metro noted that it could  
11 not locate more than 50% of the requested IAB cases. (Metro's Aug. 27, 2002  
12 Supplemental Response, Ex. 219) After the Rule 30(b)(6) depositions, Metro belatedly  
13 continued to produce IAB documents, which could not undo its failure to comply with  
14 the Court's Order to provide Plaintiffs with these critical documents *before* the  
15 Rule 30(b)(6) depositions.

16 14. As the Court may recall, it ordered Metro to provide discovery regarding  
17 the 911 call placed from Sheriff Keller's home except as to the "circumstances that led  
18 to the 911 call." (Minutes of Court June 20, 2001 (#68)) The Court ruled during the  
19 June 20, 2001 telephonic hearing that discovery of Metro's response to and  
20 investigation of the 911 call was appropriate. The Court stated:

21 On the other hand, the extent, if any, to which there was a  
22 cover up involved in -- as a result of this 911 call, for  
23 discovery purposes in this case is an appropriate area of  
24 inquiry. \* \* \* So the motion is granted, but only to the  
25 extent that there shall be no inquiry into the personal  
26 circumstances that gave rise to the 911 call. Other than that,  
27 the plaintiff will be free to inquire into relevant matters  
28 relating to policies and alleged cover-up.

(Transcript of Hearing June 20, 2001 p. 15 (#75)) Metro's PMK witness for this subject  
matter was Richard McKee. During the McKee deposition, Metro's counsel instructed  
McKee not to answer any questions regarding the briefing Sheriff Keller gave McKee

1 and others following the 911 call. (McKee Dep. 101:15-102:2) McKee was not  
2 prepared to answer whether any reports were prepared relating to this 911 call from  
3 Keller's home (even though Keller had earlier testified that he had prepared a report)  
4 and he did not do a search in the Records Bureau to see if any reports existed or ask  
5 Keller for a copy of the report Keller had testified he had prepared. (McKee Dep.  
6 131:7-9, 134:19-135:11, 136:8-10) McKee did not inquire of any of the people who  
7 were responsible for handling the evidence to see if any shell casings or bullets were  
8 preserved. (McKee Dep. 105:19-106:1, 136:16-18) McKee did not inquire regarding  
9 the identity of the Metro officers responding to the 911 call from Keller's residence or  
10 of the dispatcher who took the 911 call. (McKee Dep. 115:12-15, 117:11-18) All in  
11 all, Metro was successful at blocking discovery of this key event, in defiance of the  
12 Court's Orders.

13 Dated this 17<sup>th</sup> day of December 2002.

14   
TIMOTHY M. RASTELLO

15 COUNTY OF BOULDER )  
16 STATE OF COLORADO ) ss.

17 SUBSCRIBED AND SWORN to before me this 17<sup>th</sup> day of December 2002.  
18   
19 LINDA  
20 GREER  
21  Public  
22  
23  
24  
25  
26  
27  
28

My Commission Expires: My Commission Expires 06/03/2006



**AFFIDAVIT OF CAROL J. LEFFLER**

STATE OF COLORADO                     )  
  ) ss.  
CITY & COUNTY OF DENVER )

Carol J. Leffler, being of lawful age and first duly sworn, upon her oath states that:

1. I am a legal assistant employed by Holland & Hart and the legal assistant assigned to this case. I am responsible for the initial review, inventory, and control of all documents produced by Defendants. I am submitting this Affidavit in support of Plaintiffs' Motion to Enforce July 15, 2002 Sanctions Order (#183) and Motion for Sixth Sanctions Order. I have personal knowledge of the statements made in this Affidavit and could competently testify to such statements. The documents attached to this Affidavit, the Affidavit of Timothy M. Rastello, and the Exhibits to Plaintiffs' Motion are true and accurate copies of our original documents.

2. I have made a comprehensive review of all documents produced by Defendant Las Vegas Metropolitan Police Department ("Metro") and the individually named Metro Defendants (collectively, with "Metro," the "Metro Defendants") since December 2000. The purpose of this review was to inventory and index all documents produced by the Metro Defendants by document request number, and to identify and summarize the documents Plaintiffs requested from the Metro Defendants, but never received.

3. First Request/No.1: Metro did not produce the original or a back-up copy of the September 27, 1994 magnetic reel-to-reel tape recordings of the radio and telephone communications, as requested in Plaintiffs' First Request No. 1. Plaintiffs subpoenaed these tapes on November 10, 1994, in the state wrongful death suit, *DeLew v. Wagner*, when the original magnetic tape and back-up magnetic tape were still in existence. Metro produced a cassette tape containing selected communications made on September 27, 1994. None of the communications contained on the cassette

tape indicates the time the communication was made or the channel from which such communication was made. Plaintiffs again requested the original or back-up copy of the magnetic reel-to-reel tape. Metro never produced it.

4. First Request/No.3: In response to the Court's Order of July 15, 2002, Metro did not produce any IAB reports responsive to First Request No. 3 prior to the August 9, 2002 Court-ordered deadline. On August 27, 2002, Metro began produced some portions of certain IAB files for the years 1998 and 1999, but disclosed that it could not locate more than 50% of the responsive files. (See Ex. 215, Metro Defendants' Twenty-First Supplemental Response dated Aug. 27, 2002) Metro did not produce any additional IAB files before the conclusion of the Rule 30(b)(6) or PMK depositions on August 30, 2002.

5. First Request/No.4: On April 18, 2002, the Metro Defendants produced redacted Traffic Accident Reports in response to First Request No. 4. All information regarding witnesses and victims was redacted from these Traffic Accident Reports. I understand that at the June 13, 2002 Hearing, the Court told Metro Defendants' counsel that redaction was improper, and that counsel said unredacted copies would be produced. The Metro Defendants never did produce unredacted copies of these Traffic Accident Reports.

6. First Request/No.5: On May 2, 2002, the Metro Defendants produced DUI Arrest Reports in response to First Request No. 5. All identifying information for all victims and witnesses was redacted from these reports. After the June 13, 2002 hearing, the Metro Defendants did not produce unredacted copies of these DUI Arrest Reports.

7. First Request/No.6: Between February 2002 and May 2002, the Metro Defendants produced Traffic Accident Reports in response to First Request No. 6. All identifying information for all victims and witnesses was redacted from these reports. After the June 13, 2002 hearing, the Metro Defendants did not produce unredacted copies these reports.

1           8.     Second Request/No. 6: On July 24, 2002, in response to Plaintiffs'  
2 Second Request No. 6, the Metro Defendants did not produce the pre-employment  
3 screening materials for Keller, Pribyl, Roshak, and Thornton. On September 3, 2002,  
4 after the Rule 30(b)(6) depositions had concluded, Metro produced the pre-employment  
5 screening materials for Sheriff Keller. Metro never produced pre-employment  
6 screening materials for Metro Defendants Pribyl, Roshak, and Thornton.

7           9.     Second Request/No. 14: Lt. Moody testified that he made a copy of each  
8 Notice of Claim and gave the copies to Metro's counsel (Moody Dep. 51:24-52:17).  
9 However, the Metro Defendants did not produce any Notices of Claim responsive to No.  
10 14 or any claim files at all. (Moody Dep. 70:22-71:6, 84:4-17) The Metro Defendants  
11 did not produce a copy of the only two Notices identified in their August 9, 2002  
12 Response. (See Ex. 218, Metro Defendants' Sixth Supplemental Response to Second  
13 Requests served Aug. 9, 2002)

14          10.    Second Request/No. 15: Lt. Moody testified that Metro's computer  
15 systems track every civil action filed against any Metro officer from receipt of the  
16 complaint through payment or settlement. (Moody Dep. 40:8-41:1, 42:18-43:3, 48:17-  
17 49:1, 50:6-14) Lt. Moody testified that a list of civil actions could have been generated  
18 from Metro's computer databases. (Moody Dep. 51:24-53:3) Metro did not produce  
19 any list of civil actions responsive to No. 15. Instead, the Metro Defendants produced a  
20 copy of a publicly available list required of all police agencies by Nevada law, which  
21 contains only the claimant's name, the identity of one of the asserted claims, and the  
22 amount demanded and paid. A sample of the list is attached as Ex. 202 to Plaintiff's  
23 Motion. The list does not contain any information about any civil action or civil  
24 complaint (or whether one was even filed), or any identifying or contact information  
25 about the claimant, his counsel, or any witnesses. Even though Lt. Moody made a copy  
26 of each civil complaint for Metro's counsel to produce in this action (Moody Dep.  
27 51:24-52:17), a copy of the civil complaints was not produced in response to either No.  
28 15 or No. 20. Second Request No. 20 (and the Court's July 15 Order) required

1 production of "All records of the investigations of the citizen or administrative  
2 complaints as described in Nos. 13-19 above" (emphasis added).

3 11. Second Request/No. 17: The Metro Defendants did not produce any  
4 Accident Review Board Reports. (Moody Dep. 59:22-60:1,83:15-24, 96:18-97:7) The  
5 only documents produced in response to No. 17 of the Second Request were "yearly  
6 summaries" of the Accident Review Board Reports, but not the Reports themselves.  
7 (See Ex. 218, Metro Defendants' Sixth Supplemental Response to Second Requests  
8 served Aug. 9, 2002)

9 12. Second Request/No. 18: The Metro Defendants have not produced any  
10 documents from the Risk Manager's office as requested by Plaintiffs and ordered by the  
11 Court in its July 15, 2002 Order. Not a single claim file or investigative file from the  
12 Risk Manager's Office was produced, nor was a privilege log of withheld documents  
13 produced. (Moody Dep. 70:22-71:6, 84:4-17, 96:18-25). (See Ex. 218, Metro  
14 Defendants' Sixth Supplemental Response to Second Requests served Aug. 9, 2002)

15 13. Second Request/No. 19: No. 19 requests a copy of the citizen and  
16 administrative complaints falling within seven categories. In response to the Court's  
17 July 15 Order, the Metro Defendants produced a copy of the very cryptic Internal  
18 Affairs Bureau logs—but none of the complaints themselves. (See Ex. 218, Metro  
19 Defendants' Sixth Supplemental Response to Second Requests served Aug. 9, 2002)  
20 Metro did not begin producing responsive documents until August 27, 2002, well after  
21 the August 9, 2002 deadline and after most of the PMK depositions had been taken.

22 14. Second Request/No. 20: No. 20 of the Second Request (and the Court's  
23 July 15 Order) requires production of "All records of the investigations of the citizen or  
24 administrative complaints as described in Nos. 13-19 above" (underlining added). In  
25 their Response, served on August 9, 2002, the deadline set by the Court's July 15, 2002  
26 Order, the Metro Defendants did not submit any additional records. Instead, the Metro  
27 Defendants referred to the cryptic Internal Affairs Logs and stated:  
28



1           Additionally, if after Plaintiffs review the IAB logs they  
2           [Plaintiffs] determine that files were not produced which  
3           relate to the issues mentioned in Nos. 13-19, then every  
4           effort will be made to supplement with those additional  
5           records.

6   The Logs generally did not contain enough information to tell whether the complaint  
7   fell within the categories identified in Nos. 13-19. I have attached as Ex. 201 a few  
8   sample pages of the Logs. The Metro Defendants did not begin producing responsive  
9   documents until August 27, 2002, well after the August 9, 2002 deadline and after most  
10   of the PMK depositions had been taken. (Rastello Aff. ¶13).

11       15.   Second Request/No. 21: The Metro Defendants produced three Quality  
12   Assurance Bureau audits of the Internal Affairs Bureau dated April 1990, June 1992,  
13   and October 2000. On September 19, 2002, after completion of the Rule 30(b)(6) or  
14   PMK depositions, the Metro Defendants produced annual Staff Inspection Reports of  
15   the Internal Affairs Bureau for 1997 and 1999. No other annual Reports or other  
16   documents were produced for the other requested years (1991, 1993, 1994, 1995, 1996,  
17   1998 and 2001).

18       16.   Second Request/No. 24: The Metro Defendants did not produce any  
19   documents responsive to the Second Request No. 24 (hearing records of disciplinary  
20   actions). (See Ex. 218, Metro Defendants' Sixth Supplemental Response to Second  
21   Requests served Aug. 9, 2002)

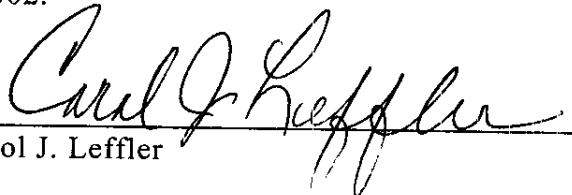
22       17.   Second Request/No. 25: The Metro Defendants did not produce any  
23   additional documents after the Court issued its July 15, 2002 Order. Unredacted copies  
24   of the 55 previously produced Traffic Accident Reports involving immediate family  
25   members of Metro officers were not produced.

26       18.   Second Request/No. 26: The Metro Defendants did not identify or  
27   produce any DUI reports for any Metro Defendant or immediate family member of a  
28   Metro Defendant.

1           19.    Second Request/No. 32: The Metro Defendants withheld responsive  
2 documents such as the Risk Manager's claim files and investigative files (Moody Dep.  
3 70:22-71:6, 84:4-17, 96:18-25), but did not produce a privilege log.

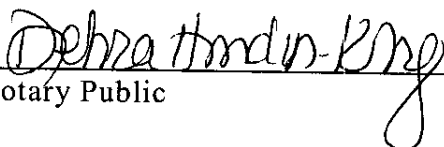
4           20.    To the best of my knowledge and belief, the above statements are true and  
5 correct, and, if called as a witness, I could and would competently testify to those facts.

6           Dated this 19<sup>th</sup> day of December 2002.

7  
8   
9 Carol J. Leffler

10           Subscribed and sworn to before me by Carol J. Leffler this 19<sup>th</sup> day of  
11 December 2002.

12           My Commission Expires: January 10, 2005

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15 Notary Public

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<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p>	<p><u>Category A:</u> Metro's policy, procedure and practice pertaining to investigating traffic and criminal incidents involving Metro officers and their immediate family members from 1990 to the present including, but not limited to, the interpretation of the LVMPD Traffic Bureau Enforcement &amp; Accident Investigations Manual and the LVMPD Manual</p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p>	<p>Metro identified Raymond Flynn and Michael Zagorski as the PMK witnesses for Category A. Flynn did not review Metro's Traffic Bureau Enforcement and Traffic Investigations Manual in preparation for his deposition. (Flynn Dep. 6:25-7:15) Zagorski did not read the Office of Policy &amp; Planning file or the Office Of Management file regarding the two 1995 policy changes. (Zagorski Dep. 24:4-15; 30:13-31:8)</p> <p>Zagorski was unable to answer questions regarding Metro's policy of sole self-investigation including two 1995 Orders (62-95 and 73-95) which first rescinded the policy of sole self-investigation and then reinstated it a few months later. (Zagorski Dep. 25:9-17, 26:7-13, 28:12-17, 29:4-16, 30:13-31:8) Zagorski could not identify what precipitated the changes to the policies, which occurred a few months after Erin DeLew's death. (Zagorski Dep. 28:12 - 31:8) Nor did he make any attempt to inquire of the author of the policies, Undersheriff Winget, in preparation for his PMK deposition. (Zagorski Dep. 25:9-17, 26:7-13, 30:13-</p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p>	<p>Because this discovery request was designed to establish that Metro's policies of self-investigation were the moving force or cause of the alleged constitutional violations and that Metro's policy decisions constitute deliberate indifference to the rights of citizens subjected to these policies:</p> <p>Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.</p> <p>In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.</p> <p>(Sanctions Requests for PMK categories A, C, E, K, L, M, O, P and EE; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)</p>
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<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p>
	<p>31:8) Consequently, Plaintiffs were unable to obtain any testimony binding upon Metro with respect to Metro's policy, procedure and practice pertaining to investigating traffic and criminal incidents involving Metro officers and their immediate family members, which was needed to establish that Metro's customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those policies.</p>	
<p><b>Category B:</b> Any and all traffic accident or criminal investigations undertaken by Metro at the request of another law enforcement agency from 1990 to the present.</p>	<p>Metro's PMK witness, Raymond Flynn, admitted that he did not review anything in preparation for this subject area. He admitted that he did not review any data or reports of criminal investigations undertaken by Metro at the request of another law enforcement agency. In fact, Flynn was not working criminal investigations between 1991 and 1997 and testified that he would not know where to start to locate reports of investigations conducted at the request of another law enforcement agency. (Flynn</p>	<p>Because this discovery was needed to prove Metro's customs and practices of protecting members of the law enforcement community in deliberate indifference to citizens' constitutional rights, and that such customs and practices were the cause or moving force of the alleged violations:  Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as</p>

Rule 30(b)(6) or PMK Designated Subject Matter	Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002	Appropriate Sanctions For Metro's Violations
	<p>Dep. 13:10-22, 16:7-19)</p> <p>Metro also designated Michael Zagorski as a witness for Category B.</p> <p>Mr. Zagorski admitted that he did not review any documents in preparation for this subject area and did not make any attempts to identify any incidents in which Metro conducted an investigation at the request of another law enforcement agency. (Zagorski Dep. 44:6-23, 47:1-4)</p> <p>Consequently, Plaintiffs were unable to obtain any testimony binding upon Metro with respect to traffic accident or criminal investigations undertaken by Metro at the request of another law enforcement agency, which was needed to establish Plaintiffs' theory that local police agencies have an unspoken custom and practice of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those policies.</p>	<p>identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.</p> <p>In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.</p> <p>(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)</p>
<u>Category C:</u> Investigations by Metro	Metro identified Raymond Flynn and	Because this discovery was

<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p>
<p>of traffic and criminal incidents involving a Metro officer or an immediate family member of a Metro officer from 1990 to the present.</p>	<p>Michael Zagorski as the PMK witnesses for Category C. Both Flynn and Zagorski admitted that they did not review any documents or investigations that fell within Category C in preparation for this deposition. (Flynn Dep. 17:19-23; Zagorski Dep. 50:4-19)</p> <p>Flynn admitted that responsive investigation files could not be identified for production from the IAB Logs; a review of the IAB file itself was necessary to determine if the allegations were relevant under Plaintiffs' requests and the Courts' Orders. (Flynn Dep. 66:4-67:7) Metro's PMK witnesses were unprepared to identify and discuss any of the investigations conducted by Metro of traffic or criminal incidents involving Metro officers or immediate family members of Metro officers from the handful of produced traffic collision reports. (Flynn Dep. 66:16-67:7; Zagorski Dep. 52:6-13; Moody Dep. 105:15-24)</p> <p>Consequently, Plaintiffs were unable to obtain any testimony binding upon Metro with respect to the investigations by</p>	<p>propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:</p> <p>Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.</p> <p>In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.</p> <p>(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are</p>

<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p>
	<p>Metro of traffic and criminal incidents involving Metro officers or immediate family members of a Metro officers, which was needed to establish Plaintiffs' theory that Metro has customs and practices of protecting Metro "insiders" from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those policies..</p>	<p>identical.)</p>
<p><b>Category D:</b> Metro's policy procedure, training, and practice for investigating driving under the influence or driving while intoxicated as of September 1994 and any subsequent revisions or proposed revisions including, but not limited to, the interpretation of the LVMPD Traffic Bureau Enforcement &amp; Accident Investigations Manual and the LVMPD Manual.</p>	<p>Chief Michael Zagorski, Metro's PMK witness for Category D (Procedure and Training for Investigating DUI cases), could not testify regarding the policies or procedures used in 1994 in DUI cases. (Zagorski Dep. 59:25-60:11, 72:16-22) Zagorski has not made a DUI arrest for 20 years, and he has never been a trainer of DUI investigative or enforcement procedures at Metro. (Zagorski Dep. 58:16-59:11, 59:25-60:11, 72:16-22) Consequently, Plaintiffs were unable to obtain any testimony binding upon Metro regarding Metro's DUI training, procedures, and practice for investigating</p>	<p>Because this discovery was calculated to establish Metro's standard operating procedures for the investigation of driving under the influence as of September 1994 and that Metro officers departed from those procedures and accorded Janet Wagner special treatment:</p> <p>Deem it established that Metro officers departed from their standard procedures for investigation of DUI in the case of Janet Wagner and accorded her special treatment and/or preclude Metro from introducing at trial evidence of Metro's standard</p>



<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p>
	<p>DUI incidents as of 1994, which was needed to establish the special treatment Mrs. Wagner received on the evening of Erin DeLew's death.</p>	<p>operating procedures for the investigation of driving under the influence as of September 1994 or evidence opposing Plaintiffs' assertion that Metro officers departed from those procedures and accorded Janet Wagner special treatment. (Sanction Requests for PMK categories D and I and 1<sup>st</sup> Req/No. 5 are virtually identical.)</p>
<p><u>Category E:</u> All reports, memoranda, summaries or other documents relating to the investigation by Metro of traffic and criminal incidents involving any Metro law enforcement personnel or an immediate family member of Metro personnel during the five years preceding and the five years following the investigation of Erin DeLew's death.</p>	<p>Metro's PMK witnesses, Raymond Flynn and Michael Zagorski, admitted they did not review any reports, memoranda, summaries or documents relating to this subject matter in preparation for the Rule 30(b)(6) depositions. (Flynn Dep. 18:18-19:11; Zagorski Dep. 50:4-19) Consequently, Zagorski was unable to discuss any of the investigations conducted by Metro of traffic or criminal incidents involving Metro officers or immediate family members of Metro officers. (Zagorski Dep. 51:10-15, 52:6-13)  These PMK witnesses were unprepared to identify and discuss any of the</p>	<p>Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:  Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional</p>

<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p>
	<p>investigations conducted by Metro of traffic or criminal incidents involving Metro officers or immediate family members of Metro officers from the handful of produced traffic collision reports. (Flynn Dep. 66:16-67:7; Zagorski Dep. 52:6-13; Moody Dep. 105:15-24)</p> <p>Consequently, Plaintiffs were unable to obtain any testimony binding upon Metro relating the investigation by Metro of traffic and criminal incidents involving any Metro law enforcement personnel or an immediate family, which was needed to establish Plaintiffs' theory that Metro has customs and practices of protecting Metro insiders from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those policies.</p>	<p>violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.</p> <p>In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.</p> <p>(Sanctions Requests for PMK categories A, C, E, K, L, M, O, P and EE; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)</p>
<p><b>Category F:</b> Use of Preliminary Breath Test Devices within Metro during the five years preceding and five years following the investigation</p>	<p>Metro's PMK witness designated to testify regarding this subject, Michael Zagorski, admitted that he had not reviewed any documents specific to</p>	<p>Because this discovery was tailored to establish that the Metro officers had available at the scene of the Erin DeLew fatality in September 1994</p>

<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p> <p>of Erin DeLew's death including, but not limited to, interpretation of the LVMPD Traffic Bureau Enforcement &amp; Accident Investigations Manual and the LVMPD Manual.</p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p> <p>Preliminary Breath Test devices at Metro in preparation for his deposition. (Zagorski Dep. 61:21-62:3) Zagorski could not testify regarding the policies or procedures used in 1994 in DUI cases. (Zagorski Dep. 59:25-60:11, 72:16-22) Zagorski has not made a DUI arrest for 20 years, and he has never been a trainer of DUI investigative or enforcement procedures at Metro. (Zagorski Dep. 58:16-59:11, 59:25-60:11, 72:16-22) Consequently, Plaintiffs were unable to obtain material testimony binding upon Metro regarding use of Preliminary Breath Test Devices within Metro as of 1994, which was needed to establish the standard operating procedures at that time in order to contrast them against the special treatment accorded Mrs. Wagner during the felony DUI investigation of Erin DeLew's death.</p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p> <p>Preliminary Breath Test Devices to administer on Janet Wagner, and that it was Metro's standard operating procedures to use such devices at the scene of traffic collisions and that Metro departed from those procedures and accorded Janet Wagner special treatment:</p> <p>Deem it established that Metro officers had available at the scene of the Erin DeLew fatality in September 1994 Preliminary Breath Test Devices to administer on Janet Wagner, that it was the Metro's standard operating procedures to use such devices at the scene of traffic collisions, and that Metro officers departed from those procedures and accorded Janet Wagner special treatment and/or preclude Metro from introducing at trial evidence of the availability of Preliminary Breath Test Devices in September 1994 or their standard operating procedures regarding the use such devices at traffic collision scenes.</p>
<p><b>Category G: The Metro policy and</b></p>	<p>Chief Michael Zagorski, Metro's PMK</p>	<p>Because this discovery was tailored</p>

<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p>	<p>practice concerning the use of blood-alcohol kits in DUI enforcement, including, but not limited to, the use of the type of kit utilized by law enforcement personnel with Office Wagner's wife on September 27, 1994.</p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p> <p>witness for Category G, could not testify regarding the policies or procedures used in 1994 in DUI felony cases in terms of extracting blood samples. (Zagorski Dep. 59:25-60:11, 72:16-22) Zagorski could not testify regarding the policies or procedures used in 1994 in DUI cases. (Zagorski Dep. 59:25-60:11, 72:16-22) Zagorski has not made a DUI arrest for 20 years, and he has never been a trainer of DUI investigative or enforcement procedures at Metro. (Zagorski Dep. 58:16-59:11, 59:25-60:11, 72:16-22) Consequently, Plaintiffs were unable to obtain material testimony binding upon Metro regarding Metro's policy and practice concerning the use of blood-alcohol kits in DUI enforcement, including the type of kit utilized by law enforcement personnel with Office Wagner's wife on September 27, 1994.</p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p> <p>to establish that it was Metro's standard operating procedure to use at two blood-alcohol kits to take at least two blood draws separated by time in suspected felony DUI cases and that Metro officers departed from those procedures and accorded Janet Wagner special treatment:</p> <p>Deem it established that Metro officers departed from their standard procedures to use two blood-alcohol kits to take at least two blood draws separated by time in suspected felony DUI cases and accorded Janet Wagner special treatment and/or preclude Metro from introducing at trial evidence opposing Plaintiffs' assertion that it was Metro's standard operating procedures to use two blood-alcohol kits to take at least two blood draws separated by time in suspected felony DUI cases and that Metro officers departed from those procedures and accorded Janet Wagner special treatment.</p>
<p><b>Category H: All fatal traffic collisions reports generated by Metro</b></p>	<p>Metro represented that it destroys traffic collision reports after five years and</p>	<p>Because this discovery was calculated to establish Metro's</p>	

<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p>
<p>during the years 1996 and 1997.</p>	<p>therefore could not produce reports during the most relevant years i.e. 1989 to 1995. (Rastello Aff. ¶3) Based on this representation, Plaintiffs and the Court narrowed the document request to the years 1996 and 1997. (Rastello Aff. ¶3) Plaintiffs learned during the Rule 30(b)(6) depositions that Metro's representation was false and that Metro retains Traffic Accident Reports permanently. (Lang Dep. 20:19-21:2; Ex. 204; Redfairm Dep. 16:22-17:5) However, Metro never did produce the pre-1995 reports. (Rastello Aff. ¶4)</p> <p>In addition, during the June 13, 2002 hearing, the Magistrate Judge ordered Metro to produce unredacted copies of the Traffic Accident Reports it had produced for the narrowed time period. (Ex. 210, Hearing Trans. 30:5-23, June 13, 2002 (#190)) However, Metro never did so. (Leffler Aff. ¶5)</p> <p>Metro employees 200 people in its Records Bureau and that it had ample resources (both human and computer) to identify and produce responsive documents. (Lang Dep. 22:23-23:11,</p>	<p>standard operating procedures for the investigation of fatal traffic collisions as of September 1994 and that Metro officers departed from those procedures and accorded Janet Wagner special treatment:</p> <p>Deem it established that Metro officers departed from their standard procedures for investigation of fatal traffic collisions in the case of Janet Wagner and accorded her special treatment and/or preclude Metro from introducing at trial evidence of Metro's standard operating procedures for the investigation of fatal traffic collisions or evidence opposing Plaintiffs' assertion that Metro officers departed from those procedures and accorded Janet Wagner special treatment.</p> <p>(Sanction Requests for PMK H and 1<sup>st</sup> Req/No. 4 are virtually identical.)</p>

<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p>
	<p>41:9-23, 43:17-20)</p> <p>Metro's PMK witness designated to testify regarding records production, Theodore Moody, did not review any documents in preparation for the deposition, was not clear on what the court ordered with regard to redactions, and did not know whether Metro had produced an unredacted copy of the 1996 and 1997 fatal traffic collision reports. (Moody Dep. 13:14-14:2) Lieutenant Moody also did not review any of the reports produced by Metro. (Moody Dep. 15:14-20)</p> <p>Detective William Redfairn was designated as Metro's PMK witness to testify regarding the process of investigating and generating fatal traffic collision reports. (Redfairn Dep. 10:20-11:6) Detective Redfairn did not review any fatal traffic collision reports generated by Metro during 1996 and 1997 and, therefore, was not able to answer anything but generalized questions. (Redfairn Dep. 12:3-21)</p> <p>Consequently, Plaintiffs were unable to obtain material testimony binding upon</p>	

<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p>
	<p>Metro regarding Metro's standard operating procedures in the investigation of fatal traffic collisions during the 1994 time period which was needed to show the Metro Defendants' departure from such standard operating procedures and the special treatment the Metro Defendants accorded Mrs. Wagner during the investigation of the vehicular homicide of Erin DeLew.</p>	
<p><b>Category I:</b> All DUI arrest reports generated by any named Metro Defendant during the years 1996 and 1997.</p>	<p>Metro represented that it destroyed DUI Arrest Reports after five years and therefore could not produce reports during the most relevant years i.e. 1991 to 1994. (Rastello Aff. ¶3) Based on this representation, Plaintiffs and the Court narrowed the document request to the years 1996 and 1997. (Rastello Aff. ¶3) Plaintiffs learned during the Rule 30(b)(6) depositions that Metro's representation was false and that Metro retains DUI Arrest Reports for 85 years. (Lang Dep. 20:3-12; Ex. 204) However, Metro never did produce the 1991-1994 reports, even though it could easily have done so. (Rastello Aff. ¶4; Moody Dep. 30:21-31:4; Counterman 194:15-22)</p>	<p>Because this discovery was calculated to establish Metro's standard operating procedures for the investigation of driving under the influence as of September 1994 and that Metro officers departed from those procedures and accorded Janet Wagner special treatment:  Deem it established that Metro officers departed from their standard procedures for investigation of DUI in the case of Janet Wagner and accorded her special treatment and/or preclude Metro from introducing at trial evidence of Metro's standard operating procedures for the investigation of driving under the</p>

<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p>
	<p>In addition, during the June 13, 2002 hearing, the Magistrate Judge ordered Metro to produce unredacted copies of the DUI Arrest Reports it had produced for the narrowed time period. (Ex. 210, Hearing Trans. 30:5-23, June 13, 2002 #190) However, Metro never did so. (Leffler Aff. ¶6)</p> <p>Metro's PMK witness designed to testify regarding records production, Theodore Moody, did not review any documents in preparation for the deposition, did not review Metro's production of DUI arrest reports to make sure it was complete, accurate, and legible. (Moody Dep. 6:18-7:1, 28:2-12)</p> <p>Detective William Redfain was designated as Metro's PMK witness to testify regarding the process of investigating and generating DUI arrest reports. Detective Redfain did not review the DUI arrest reports generated by the Metro defendants during 1996 and 1997 and, therefore, was not able to answer anything but generalized questions. (Redfain Dep. 12:19-21) Consequently, Plaintiffs were unable to</p>	<p>influence as of September 1994 or evidence opposing Plaintiffs' assertion that Metro officers departed from those procedures and accorded Janet Wagner special treatment. (Sanction Requests for PMK categories D and I and 1<sup>st</sup> Req/No. 5 are virtually identical.)</p>



<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p>
	<p>obtain material testimony binding upon Metro regarding Metro's standard operating procedures in the investigation of DUI incidents during the 1994 time period to show the departure from such procedures and the special treatment accorded to Mrs. Wagner during the investigation of the vehicular homicide of Erin DeLew.</p>	
<p><b>Category K:</b> All reports, memoranda, summaries or other documents relating to the investigation by Metro of alleged wrongful conduct committed by any law enforcement officer or an immediate family member of a law enforcement officer during the five years preceding and the five years following investigation of Erin DeLew's death.</p>	<p>Metro's designated PMK witness, Raymond Flynn, admitted that he did not review any documents outside the files relating to the DeLew incident for Category K and, therefore, would be unable to answer any questions about any other IAB allegations beyond the scope of the DeLew incident. (Flynn Dep. 21:3-14, 87:4-88:1. Flynn admitted that pertinent investigation files could not be identified from the Internal Affairs Log without a review of the complaint to determine if the allegations were relevant. (Flynn Dep. 66:16-67:7)</p> <p>Metro's PMK witnesses were unprepared to identify and discuss any of the investigations conducted by Metro of traffic or criminal incidents involving</p>	<p>Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:</p> <p>Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights</p>

<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p>
	<p>Metro officers or immediate family members of Metro officers from the handful of produced traffic collision reports. (Flynn Dep. 66:16-67:7; Zagorski Dep. 52:6-13; Moody Dep. 105:15-24)</p> <p>Consequently, Plaintiffs were unable to obtain material testimony binding upon Metro regarding Metro's investigations of alleged unlawful conduct committed by law enforcement officers or immediate family members of same, which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those policies.</p>	<p>of citizens subjected to them.</p> <p>In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.</p> <p>(Sanctions Requests for PMK categories A, C, E, K, L, M, O, P and EE; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)</p>
<p><b><u>Categories L and M:</u></b> All notice of claims for damages and civil lawsuits, actions, or complaints of alleged wrongful conduct committed by any named Metro Defendant or an</p>	<p>Even though Lt. Moody made a copy of each Notice of Claim and gave the copies to Metro's counsel (Moody Dep. 51:24-52:17), the Metro Defendants did not produce <u>any</u> of the Notice of Claims</p>	<p>Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and/or their family members involved in traffic and</p>

<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p>
<p>immediate family member of a named Metro Defendant and all notice of claims for damages against any Metro officer during the five years preceding and five years following the investigation of Erin DeLew's death.</p>	<p>requested in No. 14 of the Second Requests so that Plaintiffs might use them during the PMK depositions. (Leffler Aff. ¶9; Moody Dep. 70:22-71:6, 84:4-17) Metro's PMK witness designated to testify regarding records production for various categories, Theodore Moody, did not review any documents in preparation for the deposition. (Moody Dep. 6:18-7:1) Lt. Moody testified that Metro's computer systems track every civil action filed against any Metro officer from receipt of the complaint through payment or settlement. (Moody Dep. 40:8-41:1, 42:18-43:3, 48:17-49:1, 50:6-14) Lt. Moody testified that a list of civil actions could have been generated from Metro's computer databases. (Moody Dep. 51:24-53:3) Yet, Metro did not produce any list of civil actions responsive to No. 15. (Leffler Aff. ¶10) Even though Lt. Moody made a copy of each civil complaint for Metro's counsel to produce in this action (Moody Dep. 51:24-52:17), a copy of the civil complaints was not produced to Plaintiffs so Plaintiffs might question Metro's PMK witnesses</p>	<p>criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:</p> <p>Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.</p> <p>In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.</p> <p>(Sanctions Requests for PMK categories A, C, E, K, L, M, O, P and EE; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)</p>

<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p>
	<p>regarding the civil actions. (Leffler Aff. ¶10)</p> <p>Lieutenant Moody did not review the Internal Affairs logs produced or attempt to identify responsive IAB files for purposes of production. (Moody Dep. 78:14-79:8) Deputy Chief Flynn admitted that pertinent investigation files could not be identified for production without a review of the complaint to determine if the allegations were relevant. (Flynn Dep. 66:16-67:7)</p> <p>Consequently, Plaintiffs were unable to obtain material testimony binding upon Metro regarding Metro's investigations of alleged wrongful conduct committed by any law enforcement officer or an immediate family member of a law, which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and practice of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those policies.</p>	

<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p>
<p><b>Category O:</b> All accident review board records and accident review board reports relating to the allegations of wrongful conduct committed by any named Metro Defendant and all accident review board records and accident review board reports relating to allegations against any Metro officer for false reporting, perjury, fraudulent investigation, false arrest, concealment, cover-up or conspiracy during the five years preceding and five years following the investigation of Erin DeLew's death.</p>	<p>Metro's PMK witness, Theodore Moody, admitted that he did not review anything in preparation for this subject area. (Moody Dep. 6:18-7:1) Lieutenant Moody testified that the Accident Review Board reports were not produced. (Leffler Aff. ¶11; Moody Dep. 59:22-60:1, 80:1-13; 83:15-83:24, 96:18-97:.)</p> <p>Consequently, Plaintiffs were unable to obtain testimony binding upon Metro regarding Metro's Accident Review Board investigations, which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and practice of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those policies..</p>	<p>Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and/or their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations: Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.</p> <p>In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.</p> <p>(Sanctions Requests for PMK categories A, C, E, K, L, M, O, P and EE; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup></p>

<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p>
<p><u><b>Category P:</b></u> All documents relating to Metro's Risk Management Office or Unit that mention allegations of wrongful conduct committed by any named Metro defendant or an immediate family member of a named Metro defendant and all documents relating to Metro's Risk Management Office or Unit that mention allegations against any Metro officer during the five years preceding and five years following the investigation of Erin DeLew's death.</p>	<p>The Metro Defendants did not produce any documents from the Risk Manager's office as requested by Plaintiffs and ordered by the Court in its July 15, 2002 Order. (Leffler Aff. ¶12) (See Ex. 218, Metro Defendants' Sixth Supplemental Response to Second Requests served Aug. 9, 2002) Not a single claim file or investigative file from the Risk Manager's Office was produced, nor was a privilege log of withheld documents produced. (Moody Dep. 70:22-71:6, 84:4-17, 96:18-25).</p>	<p>Req/Nos. 14, 15 17-21, 24-26 are identical.)</p> <p>Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and/or their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:</p> <p>Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.</p> <p>In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.</p> <p>(Sanctions Requests for PMK</p>

Rule 30(b)(6) or PMK Designated Subject Matter	Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002	Appropriate Sanctions For Metro's Violations
		categories A, C, E, K, L, M, O, P and EE; 1 <sup>st</sup> Req/Nos. 3 and 6; and 2 <sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)
<p><u>Category Q:</u> Management audits relating to the evaluation or assessment, whether internal or external of Metro's investigation of police misconduct from 1990 to the present.</p>	<p>Metro's PMK witness on Category Q, Deputy Chief Raymond Flynn, only reviewed two of the 12 Annual Bureau Inspections for Internal Affairs in preparation for his deposition. Flynn did not review the policy manual and therefore could not testify as to the frequency of for periodic audits or inspections of Internal Affairs. (Flynn Dep. 25:24-26:15, 31:15-18, 69:1-16) Flynn did not review the annual Quality Assurance audits. (Flynn Dep. 38:7-38:9) In preparation for his deposition, Flynn did not review the CALEA or accreditation portion of the annual inspection report of Internal Affairs from the 1990s. (Flynn Dep. 46:18-47:5; 62:13-63:9)</p> <p>Consequently, Plaintiffs were unable to obtain material testimony binding upon Metro regarding any audits or evaluation of Metro's investigation of police misconduct, which was needed to</p>	<p>Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and/or their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:</p> <p>Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.</p> <p>In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal</p>

<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p>
	<p>establish Plaintiffs' theory that Metro has a customs and practices of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those policies.</p>	<p>liability claim. (Sanctions Requests for PMK categories A, C, E, K, L, M, O, P and EE; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)</p>
<p><u><b>Category T:</b></u> The radio channel and other contact with Metro officers on September 27, 1994, including the tape or log of all such contact and including, but not limited to, the interpretation of the LVMPD Communication Center Event Search (attached as Exhibit A). <u><b>Category U:</b></u> The LVMPD Audio Tape of the September 27, 1994 dispatch.</p>	<p>Metro's PMK witness on Categories T and U, Sharon Counterman, Operations Director for Metro Communications Bureau, could not answer whether the original or backup copy of the magnetic tape recordings made on the evening of Erin DeLew's death still exists or what even happened to the tapes. (Counterman Dep. 173:13 – 174:9) Ms. Counterman did not inspect the vaults where the tapes are kept to determine whether it still exists. Ms. Counterman did not make any inquiries regarding the whereabouts of any inventory, list or log books of preserved tapes. (Counterman Dep. 65:14-17, 66:11-13, 70:18-22, 77:19-78:13, 79:18-80:1, 91:15-91:18) Ms. Counterman could not testify</p>	<p>Because this discovery request was calculated to establish Metro's knowledge of Janet Wagner's intoxication, the purposeful delay in investigating and calling NHP, the facts surrounding escorting Mrs. Wagner to her home during the middle of the investigation (including the escorting officers' identities), and the favorable treatment accorded Mrs. Wagner, and given the destruction of this evidence after it was subpoenaed in the state wrongful death case: Deem it established that Metro officers knew of Janet Wagner's intoxication, purposefully delayed investigating the fatality and calling</p>



<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p>
	<p>regarding who made the incomplete cassette audio tape produced in the case relating to the Erin DeLew fatality, how the tape was made, or when the tape was made. Ms. Counterman did not even make the most basic inquiries to discover this information prior to her deposition. (Counterman Dep. 71:13-23, 87:18-88:4, 160:15-20, 161:5-15, 166:8-14, 172:21-25, 173:2-12)</p> <p>Ms. Counterman also could not answer any questions regarding Metro's pager system and whether or not the MDT text messages were stored electronically anywhere. (Counterman Dep. 42:8-13, 47:2-47:6, 48:13-16).</p> <p>Ms. Counterman could not identify the crime scene supervisor or traffic sergeant dispatched to the Erin DeLew fatality from the Incident Recall documents. Nor could Ms. Counterman identify which Metro officers drove Janet Wagner home during the investigation. (Counterman Dep. 111:11-14, 114:20-23, 133:21-25, 141:2-9, 146:19-24, 206:22-207:3)</p> <p>Consequently, Plaintiffs were unable to obtain material testimony binding upon</p>	<p>NHP, escorted Janet Wagner to and from the scene to her home during the investigation, and accorded her special treatment and/or preclude Metro from introducing at trial evidence opposing Plaintiffs' assertion of the above-stated facts. (Sanction Requests for PMK categories T, U, CC and 1<sup>st</sup> Req/No. 1 are virtually identical.)</p>

<p><b>Rule 30(b)(6) or PMK Designated Subject Matter</b></p>	<p><b>Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002</b></p>	<p><b>Appropriate Sanctions For Metro's Violations</b></p>
	<p>Metro regarding the communications made on the evening of Erin DeLew's death, which were needed to establish Metro's knowledge of Mrs. Wagner's intoxication, the purposeful delay in investigating and calling NHP, the facts surrounding escorting Mrs. Wagner to her home during the middle of the investigation (including the escorting officers' identities), the favorable treatment accorded Mrs. Wagner, and the early knowledge of high level Metro supervisors, including some of the Metro Defendants, regarding the felony DUI/vehicular homicide of Erin DeLew.</p>	
<p><b>Category CC:</b> All cellular telephone records from September 27, 1994 to September 30, 1994 for all named Metro Defendants and all Metro personnel involved in any aspect of the DeLew fatal traffic collision investigation.</p>	<p>Deputy Chief Richard McKee, Metro's PMK witness for Category CC, was unprepared to answer questions regarding the cellular telephone calls made by Defendants on the evening of September 27, 1994 including answers to the most basic questions regarding the identity of numbers and names on the cellular bills. He did not bother to make the most basic inquiries to discover the information. (McKee Dep. 46:15-22, 47:10-24, 48:20-49:14, 50:2-9, 51:1-25,</p>	<p>Because this discovery request was calculated to establish Metro's knowledge of Janet Wagner's intoxication, the purposeful delay in investigating and calling NHP, the facts surrounding escorting Mrs. Wagner to her home during the middle of the investigation (including the escorting officers' identities), and the favorable treatment accorded Mrs. Wagner: Deem it established that Metro</p>

Rule 30(b)(6) or PMK Designated Subject Matter	Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002	Appropriate Sanctions For Metro's Violations
	<p>53:10-54:7, 55:24-57:3, 62:10-23)</p> <p>Consequently, Plaintiffs were unable to obtain material testimony binding upon Metro regarding the communications made on the evening of Erin DeLew's death, which were needed to establish Metro's knowledge of Mrs. Wagner's intoxication, the purposeful delay in investigating and calling NHP, the facts surrounding escorting Mrs. Wagner to her home during the middle of the investigation (including the officers' identities), the favorable treatment accorded Mrs. Wagner, and the knowledge of high level Metro supervisors regarding the fatal incident.</p>	<p>officers knew of Janet Wagner's intoxication, purposefully delayed investigating the fatality and calling NHP, escorted Janet Wagner to and from the scene to her home during the investigation, and accorded her special treatment and/or preclude Metro from introducing at trial evidence opposing Plaintiffs' assertion of the above-stated facts. (Sanction Requests for PMK categories T, U, CC and 1<sup>st</sup> Req/No. 1 are virtually identical.)</p>
<p><u>Category EE:</u> All 911 calls placed from Jerry Keller's home from 1990 to the present and any subsequent handling of the records or documents concerning the calls.</p>	<p>Metro's PMK witness for Category EE, Richard McKee, did not know whether any reports were prepared relating to this 911 call from Sheriff Keller's home (even though Sheriff Keller testified that he has prepared a report) and did not do a search in the records section to see if any reports existed. (Rastello Aff. ¶14; McKee Dep. 131:7-9, 134:19-137:2) McKee was instructed not to answer any questions on the briefing at Metro</p>	<p>Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and/or their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:</p>

Rule 30(b)(6) or PMK Designated Subject Matter	Proof of Metro's Violations of July 15, 2002 Order To Produce Knowledgeable Rule 30(b)(6) or "PMK" Witnesses By August 30, 2002	Appropriate Sanctions For Metro's Violations
	<p>regarding the 911 call from Sheriff Keller's house. (Rastello Aff. ¶14; McKee Dep. 100:25-102:18) McKee did not inquire of any of the people who were responsible for handling the evidence to see if any shell casings or bullets were preserved. (McKee Dep. 105:19-106:1) McKee made no effort to check to see if any evidence was booked relating to the event. McKee did not inquire regarding the identity of the persons responding to the 911 call from Sheriff Keller's residence, and he made no inquiry of the dispatcher who took the 911 call from Sheriff Keller's residence. (Rastello Aff. ¶14; McKee Dep. 105:19-106:1, 115:12-15, 117:11-18, 125:6-13, 131:7-9, 135:4-11, 136:8-10, 136:16-18, 136:24-137:2)</p>	<p>Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.</p> <p>In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.</p> <p>(Sanctions Requests for PMK categories A, C, E, K, L, M, O, P and EE; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical)</p>



Document Request	Proof of Metro Defendants' Violations of Court's July 15, 2002 Order	Appropriate Sanction For Metro Defendants' Violations of Court's July 15, 2002 Order
<p><u>1st Request No. 1:</u> All documents relating to ... Defendants' actions (or lack of action) pertaining to the investigation or circumstances surrounding the death of Erin DeLew.</p>	<p>Metro never produced either the original or back-up copy of the Sept. 27, 1994 magnetic tape recordings of the radio and telephone channels. (Leffler Aff. ¶3) In fact, Metro's Rule 30(b)(6) witness did not even inspect the vault containing the tapes to see if they still existed. (Counterterm Dep. 77:19-78:2, 79:18-80:1, 173:13-174:9.)</p> <p>Plaintiffs subpoenaed these tapes on November 10, 1994 in the state wrongful death suit, <i>DeLew v. Wagner</i>, when the original magnetic tape and back-up magnetic tape were still in existence. (Leffler Aff. ¶3)</p> <p>Metro produced a cassette tape containing some self-selected communications made on September 27, 1994. (Leffler Aff. ¶3) None of the communications contained on the cassette tape indicate the time the communication was made or the channel from which such communication was made. (Leffler Aff. ¶3)</p> <p>Consequently, Plaintiffs were</p>	<p>Because discovery of the tape recorded communications was calculated to establish Metro's knowledge of Janet Wagner's intoxication, the purposeful delay in investigating and calling NHP, the facts surrounding escorting Mrs. Wagner to her home during the middle of the investigation (including the escorting officers' identities), and the favorable treatment accorded Mrs. Wagner, and given the destruction of this evidence after it was subpoenaed in the state wrongful death case:</p> <p>Deem it established that the Metro Defendants knew of Janet Wagner's intoxication, purposefully delayed investigating the fatality and calling NHP, escorted Janet Wagner to and from the scene to her home during the investigation, and accorded her special treatment and/or preclude the Metro Defendants from introducing at trial evidence</p>

Document Request	Proof of Metro Defendants' Violations of Court's July 15, 2002 Order	Appropriate Sanction For Metro Defendants' Violations of Court's July 15, 2002 Order
	<p>deprived material evidence regarding the communications made on the evening of Erin DeLew's death, which were needed to establish the Metro Defendants' knowledge of Mrs. Wagner's intoxication, the purposeful delay in investigating and calling NHP, the facts surrounding escorting Mrs. Wagner to her home during the middle of the investigation (including the escorting officers' identities), the favorable treatment accorded Mrs. Wagner, and the early knowledge of high level Metro supervisors, including some of the Metro Defendants, regarding the felony DUI/vehicular homicide of Erin DeLew..</p>	<p>opposing Plaintiffs' assertion of the above-stated facts.  (Sanction Requests for PMK categories T, U, CC and 1<sup>st</sup> Req/No. 1 are virtually identical.)</p>
<p><b><u>1st Request No. 3</u></b> All reports, memoranda, summaries or other documents relating to the investigation by METRO and NHP of alleged wrongful conduct committed by any law enforcement officer or an immediate family member of a law enforcement officer during the five years preceding and five years following the investigation of Erin</p>	<p>Metro did not produce a single responsive document prior to August 9, 2002. (See Ex. 218, Metro Defendants' Sixth Supplemental Response to Second Requests served Aug. 9, 2002) Rather, on July 24, 2002, Metro served by mail the cryptic and uninformative IAB logs and advised Plaintiffs to review the logs and identify responsive</p>	<p>Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the</p>

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<p>DeLew's death.</p> <p><b>(Revised per Court Order dated 8/15/01):</b> Documents relating to the investigation ... of alleged wrongful conduct committed by any named Metro Defendant or an immediate family member or any documents relating to the investigation ... for false reporting, perjury, fraudulent investigation, false arrest, concealment, cover-up or conspiracy.</p>	<p>documents, even though it is not possible to do so given the nature of the cryptic logs. (Rastello Aff. ¶¶10-11; Flynn Dep. 66:16-67:11, Moody Dep. 78:16-79:1) Metro did not review any of its IAB files to identify responsive documents. (Moody Dep. 78:16-79:1) Metro did not begin producing responsive documents until August 27, 2002, well after the August 9, 2002 deadline and after most of the PMK depositions had been taken. ((Rastello Aff. ¶13; Leffler Aff. ¶4)</p> <p>Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed any law enforcement officers or immediate family members of same, which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens</p>	<p>alleged constitutional violations:</p> <p>Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.</p> <p>In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.</p> <p>(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)</p>



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<p><b>1st Request No. 4:</b> All fatal traffic collision reports investigated by Metro during the five years proceeding and five years following the preparation of the traffic collision report pertaining to Erin DeLew's death.</p> <p><b>[Revised Per Court Order 8/15/01 to:</b> All fatal traffic collision reports investigated by Metro during the years 1996 and 1997.]</p>	<p>subjected to those customs and policies.</p> <p>Metro represented that it destroys traffic collision reports after five years and therefore could not produce reports during the most relevant years i.e. 1989 to 1995. (Rastello Aff. ¶3) Based on this representation, Plaintiffs and the Court narrowed the document request to the years 1996 and 1997. (Rastello Aff. ¶3) Plaintiffs learned during the Rule 30(b)(6) depositions that Metro's representation was false and that Metro retains Traffic Accident Reports permanently. (Lang Dep. 20:19-21:2; Ex. 204; Redfairn Dep. 16:22-17:5) However, Metro never did produce the pre-1995 reports. (Rastello Aff. ¶4)</p> <p>In addition, during the June 13, 2002 hearing, the Magistrate Judge ordered Metro to produce unredacted copies of the Traffic Accident Reports it had produced for the narrowed time period. (Ex. 210, Hearing Trans. 30:5-23, June 13, 2002 (#190)) However, Metro never did so. (Leffler</p>	<p>Because this discovery was calculated to establish Metro's standard operating procedures for the investigation of fatal traffic collisions as of September 1994 and that the Metro Defendants departed from those procedures and accorded Janet Wagner special treatment:</p> <p>Deem it established that the Metro Defendants departed from their standard procedures for investigation of fatal traffic collisions in the case of Janet Wagner and accorded her special treatment and/or preclude the Metro Defendants from introducing at trial evidence of the Metro Defendants' standard operating procedures for the investigation of fatal traffic collisions or evidence opposing Plaintiffs' assertion that the Metro Defendants departed from those procedures and accorded Janet Wagner special treatment.</p> <p>(Sanction Requests for PMK H and</p>

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	<p>Aff. ¶(5)</p> <p>Metro employees 200 people in its Records Bureau and that it had ample resources (both human and computer) to identify and produce responsive documents. (Lang Dep. 22:23-23:11, 41:9-23, 43:17-20)</p> <p>Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' standard operating procedures in the investigation of fatal traffic collisions, which was needed to show the Metro Defendants' departure from such standard operating procedures and the special treatment the Metro Defendants accorded Mrs. Wagner during the investigation of the vehicular homicide of Erin DeLew.</p>	<p>1<sup>st</sup> Req/No. 4 are virtually identical.)</p>
<p><b>1st Request No. 5:</b> All DUI arrest reports generated by each individual Defendant during the three years preceding the investigation of Janet Wagner's sobriety at the scene of Erin DeLew's death.</p> <p><b>[Revised Per Court Order 8/15/01]:</b> All DUI Arrest Reports generated by</p>	<p>Metro represented that it destroyed DUI Arrest Reports after five years and therefore could not produce reports during the most relevant years i.e. 1991 to 1994. (Rastello Aff. ¶(3) Based on this representation, Plaintiffs and the Court narrowed the document request to the years 1996</p>	<p>Because this discovery was calculated to establish Metro's standard operating procedures for the investigation of driving under the influence as of September 1994 and that the Metro Defendants departed from those procedures and accorded Janet</p>

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any named Metro Defendants during 1996 and 1997.]	<p>and 1997. (Rastello Aff. ¶3) Plaintiffs learned during the Rule 30(b)(6) depositions that Metro's representation was false and that Metro retains DUI Arrest Reports for 85 years. (Lang Dep. 20:3-12; Ex. 204) However, Metro never did produce the 1991-1994 reports, even though it could easily have done so. (Rastello Aff. ¶4; Moody Dep. 30:21-31:4; Counterman 194:15-22)</p> <p>In addition, during the June 13, 2002 hearing, the Magistrate Judge ordered Metro to produce unredacted copies of the DUI Arrest Reports it had produced for the narrowed time period. (Ex. 210, Hearing Trans. 30:5-23, June 13, 2002 #190) However, Metro never did so. (Leffler Aff. ¶6)</p> <p>Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' standard operating procedures in the investigation of DUI incidents during the 1994 time period to show the departure from such procedures and the special treatment accorded to Mrs.</p>	<p>Wagner special treatment:</p> <p>Deem it established that the Metro Defendants departed from their standard procedures for investigation of DUI in the case of Janet Wagner and accorded her special treatment and/or preclude Metro from introducing at trial evidence of the Metro Defendants' standard operating procedures for the investigation of driving under the influence as of September 1994 or evidence opposing Plaintiffs' assertion that the Metro Defendants departed from those procedures and accorded Janet Wagner special treatment.</p> <p>(Sanction Requests for PMK categories D and I and 1<sup>st</sup> Req/No. 5 are virtually identical.)</p>

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<p><b>1st Request No. 6:</b> All ... documents relating to the investigation by METRO and NHP of injury or fatal traffic collisions involving any law enforcement officer or an immediate family member of a law enforcement officer during the five years preceding and five years following the investigation of Erin DeLew's death.</p> <p><b>[Revised Per Court Order 12/4/01]:</b> All ... documents relating to the investigation by METRO and NHP of injury or fatal traffic collisions involving any law enforcement officer or an immediate family member of a law enforcement officer during the thirty-month period preceding and the thirty-month period following the investigation of Erin DeLew's death.]</p>	<p>Wagner during the investigation of the vehicular homicide of Erin DeLew.</p> <p>Metro initially claimed that it would be too burdensome to identify and produce responsive documents to No. 6. (Rastello Aff. ¶7) The Court rejected this argument in its August 15, 2001 Order, and directed Metro to produce the documents. (Ex. 206, Order dated Aug. 15, 2001 (#100)) Metro moved for reconsideration. In its Motion for Reconsideration, Metro stated that it had identified 55 reports as a result of a department-wide e-mail inquiry, but resisted doing more, again claiming the request was too burdensome. (Metro Motion for Reconsideration at 11-12, Aug. 29, 2001 (#106)) Metro attached the Affidavit of Lt. John Thornton, who explained the steps that would be necessary to produce the requested documents. (Rastello Aff. ¶7) The Court re-affirmed its earlier Order, but narrowed the time period from ten years to five years. (Ex.207, Order dated December 3, 2001 (#124)) When Metro still refused to comply, Plaintiffs filed the Motion for Sanctions that led to the</p>	<p>Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:</p> <p>Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.</p> <p>In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.</p>

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	<p>July 15 Order. (Rastello Aff. ¶8)</p> <p>Despite the plain language of the July 15, 2002 Order, Metro refused to undertake the procedures necessary to identify responsive documents for the shortened time period and did not produce a single report involving any Metro immediate family member in response to the Court's Order. (Rastello Aff. ¶8) Lt. Moody acknowledged that Metro had not undertaken the steps detailed by Lt. Thornton as necessary to identify and produce the requested documents, despite the Court's reduction of the discoverable time period from ten years to five years. (Moody Dep. 87:9-17, 88:6-13, 93:7-10)</p> <p>Metro employees 200 people in its Records Bureau and that it had ample resources (both human and computer) to identify and produce responsive documents. (Lang Dep. 22:23-23:11, 41:9-23, 43:17-20)</p> <p>In addition, although Metro earlier had produced approximately 55 redacted reports involving off-duty Metro officers or immediate family members, it failed to produce a copy of the unredacted</p>	<p>(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)</p>

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	<p>reports as ordered by the Court during the June 13, 2002 hearing and failed to identify the Metro family member involved in the collision until after the Rule 30(b)(6) depositions were completed. (Rastello Aff. ¶9; Leffler Aff. ¶17) Consequently, Metro has never disclosed the contact information of persons similarly situated to the DeLew family (<i>i.e.</i>, citizens involved in traffic collisions with Metro off-duty officers and their family members), despite the Court's plain orders to do so. (Rastello Aff. ¶8)</p> <p>Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed any law enforcement officers or immediate family members of same, which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens</p>	

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<p><u>2<sup>nd</sup> Request No. 6:</u> All records relating to the pre-employment screening of the individual Defendants...</p>	<p>subjected to those customs and policies.</p> <p>Responsive documents for Defendants Pribyl, Roshak, and Thornton were never produced. Responsive documents for Keller were produced after the Rule 30(b)(6) deposition of the person most knowledgeable regarding the documents. (Leffler Aff. ¶8; Spring Dep. 25:20-22, 26:7-9)</p>	<p>Costs, including fees, of the Rule 30(b)(6) depositions and of this Motion.</p>
<p><u>2<sup>nd</sup> Request No. 10:</u> The watch list and any other lists containing the names of personnel on duty during the various shifts from 6:00 p.m. on September 27, 1994 to and including 5:00 p.m. on September 28, 1994.</p>	<p>Metro represented to the Court that it would take 150-200 overtime hours to generate such a list. (Ex. 209, Defendants' Response to Plaintiffs' Second Request for Production of Documents (First Supplement) dated March 18, 2002, at 6:1-13) On August 9, 2002 Metro produced a computer-generated list that took only moments to prepare. (McKee Dep. 63:5-64:11) The delayed production prevented Plaintiffs from identifying key persons on duty on Sept. 27, 1994 (the day of Erin DeLew's death) including the officers who drove Mrs. Wagner to her home (and returned her to the scene) during the fatal traffic</p>	<p>Costs, including fees, of the Rule 30(b)(6) depositions and of this Motion.</p>

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<p><b>2<sup>nd</sup> Request No. 14:</b> All documents summarizing, tabulating, or compiling any notice of claims for damages, including the actual notices, made against any individual defendant and any Metro officers alleging certain types of wrongdoing.</p>	<p>investigation.</p> <p>Even though Lt. Moody made a copy of each Notice of Claim and gave the copies to Metro's counsel (Moody Dep. 51:24-52:17), the Metro Defendants did not produce any of the Notice of Claims requested in No. 14 of the Second Requests and ordered by the Court to be produced in its July 15, 2002 Order. (Leffler Aff. ¶9; Moody Dep. 70:22-71:6, 84:4-17) In fact, the Metro Defendants did not even produce a copy of the only two Notices it identified in its August 9, 2002 Response. (See Leffler Aff. ¶9; Ex. 218, Metro Defendants' Sixth Supplemental Response to Second Requests served Aug. 9, 2002)</p> <p>Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed any law enforcement officers which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such</p>	<p>Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:</p> <p>Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.</p> <p>In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.</p> <p>(Sanctions Requests for PMK</p>



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	customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.	categories A, C, E, K, L, M, O and P; 1 <sup>st</sup> Req/Nos. 3 and 6; and 2 <sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)
<p><b>2<sup>nd</sup> Request No. 15:</b> All documents summarizing, tabulating or compiling the civil lawsuits, actions, or complaints filed (a) against any individual Defendant for any alleged misconduct and (b) against any NHP or METRO officer ... from 1990 to the present.</p>	<p>Lt. Moody testified that Metro's computer systems track every civil action filed against any Metro officer from receipt of the complaint through payment or settlement. (Moody Dep. 40:8-41:1, 42:18-43:3, 48:17-49:1, 50:6-14) Lt. Moody testified that a list of civil actions could have been generated from Metro's computer databases. (Moody Dep. 51:24-53:3) Yet, Metro did not produce any list of civil actions responsive to No. 15. (Leffler Aff. ¶10) Instead, the Metro Defendants produced a copy of a publicly available list required of all police agencies by Nevada law, which contains only the claimant's name, the identity of one of the asserted claims, and the amount demanded and paid. (Leffler Aff. ¶10) A sample of the list is attached as Ex. 202 to Plaintiff's Motion. The list does not contain any</p>	<p>Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:</p> <p>Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.</p>

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	<p>information about any civil action or civil complaint (or whether one was even filed), or any identifying or contact information about the claimant, his counsel, or any witnesses. Even though Lt. Moody made a copy of each civil complaint for Metro's counsel to produce in this action (Moody Dep. 51:24-52:17), a copy of the civil complaints was not produced in response to either No. 15 or No. 20. (Lefler Aff. ¶10) No. 20 of the Second Request (and the Court's July 15 Order) required production of "All records of the investigations of the citizen or administrative complaints as described in <u>Nos. 13-19 above</u>" (underlining added). Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed any law enforcement officers which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving</p>	<p>In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.</p> <p>(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)</p>

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<p><b>2<sup>nd</sup> Request No. 17:</b> All accident review board records and accident review board reports that mention (a) any individual Defendant or (b) concern any complaint made against any METRO officer....</p>	<p>force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.</p> <p>The Metro Defendants did not produce any Accident Review Board Reports. (Moody Dep. 59:22-60:1, 83:15-24, 96:18-97:7) The only documents produced in response to No. 17 of the Second Request were "yearly summaries" of the Accident Review Board Reports, but not the Reports themselves. (Leffler Aff. ¶11)(See Ex. 218, Metro Defendants' Sixth Supplemental Response to Second Requests served Aug. 9, 2002)</p> <p>Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed any law enforcement officers which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving</p>	<p>Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:</p> <p>Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.</p> <p>In the alternative, prohibit Metro</p>

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	<p>force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.</p>	<p>from offering evidence at trial opposing Plaintiffs' municipal liability claim.  (Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)</p>
<p><u>2<sup>nd</sup> Request No. 18:</u> All documents relating to the State of Nevada or Las Vegas Risk Management office or program that mention (a) any individual Defendant or (b) concern any complaint made against any NHP or METRO officer ...</p>	<p>The Metro Defendants have not produced any documents from the Risk Manager's office as requested by Plaintiffs and ordered by the Court in its July 15, 2002 Order. (See Ex. 218, Metro Defendants' Sixth Supplemental Response to Second Requests served Aug. 9, 2002) Not a single claim file or investigative file from the Risk Manager's Office was produced, nor was a privilege log of withheld documents produced. (Moody Dep. 70:22-71:6, 84:4-17, 96:18-25). (Leffler Aff. ¶12)</p> <p>Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed any law enforcement</p>	<p>Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:</p> <p>Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate</p>

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	<p>officers which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.</p>	<p>indifference to the constitutional rights of citizens subjected to them.</p> <p>In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.</p> <p>(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)</p>
<p><b>2<sup>nd</sup> Request No. 19:</b> All citizen or administrative complaints of police misconduct ... from 1990 to present ...related...to allegations of: (1) Investigating traffic and criminal incidents involving ...law enforcement officers and...family members; (2) Inadequately and/or fraudulently investigating claims of...misconduct...; (3) Covering up...wrongful activities ...by false reporting, false investigating, perjury, obstruction of justice or dishonesty; (4) Refusing to supervise, reprimand and/or discipline...officers who engage in misconduct; (5) Failing to</p>	<p>Metro did not produce a single responsive document prior to August 9, 2002. (See Ex. 218, Metro Defendants' Sixth Supplemental Response to Second Requests served Aug. 9, 2002) Rather, on July 24, 2002, Metro served by mail the cryptic and uninformative IAB logs and advised Plaintiffs to review the logs and identify responsive documents, even though it is not possible to do so given the nature of the cryptic logs. (Rastello Aff. ¶¶10-11; Flynn Dep. 66:16-67:11, Moody Dep. 78:16-79:11) Metro did not review any of its IAB files to identify</p>	<p>Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:</p> <p>Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint,</p>

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<p>administer adequate and standard field sobriety tests to...officers or their ...family members suspected of DUI; (6) Failing to enforce the law, rules, regulations and procedures when an investigation is conducted of a... officer's misconduct...; and (7) Inadequately training and supervising officers with respect to the investigation of misconduct by...officers or...family members.</p>	<p>responsive documents. (Moody Dep. 78:16-79:1) Metro did not begin producing responsive documents until August 27, 2002, well after the August 9, 2002 deadline and after most of the PMK depositions had been taken. (Rastello Aff. ¶13; Leffler Aff. ¶13)</p> <p>Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed any law enforcement officers which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.</p>	<p>were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.</p> <p>In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.</p> <p>(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)</p>
<p><u>2<sup>nd</sup> Request No. 20:</u> All records of the investigations of the citizen or administrative complaints as</p>	<p>Metro did not produce a single responsive document prior to August 9, 2002. (Sec Ex. 218, Metro Defendants' Sixth Supplemental</p>	<p>Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and</p>

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described in Nos. 13-19 above.	<p>Response to Second Requests served Aug. 9, 2002) Rather, on July 24, 2002, Metro served by mail the cryptic and uninformative IAB logs and advised Plaintiffs to review the logs and identify responsive documents, even though it is not possible to do so given the nature of the cryptic logs. (Rastello Aff. ¶¶10-11; Flynn Dep. 66:16-67:11, Moody Dep. 78:16-79:1) Metro did not review any of its IAB files to identify responsive documents. (Moody Dep. 78:16-79:1) Metro did not begin producing responsive documents until August 27, 2002, well after the August 9, 2002 deadline and after most of the PMK depositions had been taken. (Rastello Aff. ¶13; Leffler Aff. ¶14)</p> <p>Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed any law enforcement officers which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and</p>	<p>their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:</p> <p>Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.</p> <p>In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.</p> <p>(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos.14, 15 17-21, 24-26 are identical.)</p>

Document Request	Proof of Metro Defendants' Violations of Court's July 15, 2002 Order	Appropriate Sanction For Metro Defendants' Violations of Court's July 15, 2002 Order
	criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.	
<p><b>2nd Request No. 21:</b> All documents such as management audits relating to the evaluation or assessments, whether internal or external, of NHP's or METRO's investigation of police misconduct from 1990 to the present.</p>	<p>On July 24, 2002, Metro produced three Quality Assurance Bureau audits of the Internal Affairs Bureau dated April 1990, June 1992, and October 2000. During the 30(b)(6)/PMK depositions, Plaintiffs discovered that there were several additional reports not yet produced. (Flynn Dep. 25:24-26:15)</p> <p>On September 19, 2002, after the 30(b)(6)/PMK depositions were completed, Metro produced additional Staff Inspection Reports of the Internal Affairs Bureau for 1997 and 1999. Metro never produced the annual inspection reports for the other years (1991, 1993, 1994, 1995, 1996, 1998 and 2001). (Leffler Aff. ¶15)</p> <p>Consequently, Plaintiffs were deprived material evidence regarding</p>	<p>Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:</p> <p>Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.</p>



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	<p>the Metro Defendants' investigations of alleged unlawful conduct committed any law enforcement officers which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.</p>	<p>In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.</p> <p>(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)</p>
<p><b>2nd Request No. 24:</b> All pre-disciplinary hearing records and disciplinary hearing records (including tapes and transcripts) relating to complaints made (a) against any individual Defendant and (b) against any NHP or METRO officer ... from 1990 to the present.</p>	<p>Metro did not produce a single responsive document. (Leffler Aff. ¶16; Ex. 218, Metro Defendants' Sixth Supplemental Response to Second Requests served Aug. 9, 2002)</p> <p>Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed any law enforcement officers which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and</p>	<p>Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:</p> <p>Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies</p>

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	<p>criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.</p>	<p>and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.</p> <p>In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.</p> <p>(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)</p>
<p><b>2nd Request No. 25:</b> All traffic collision reports related to incidents involving any individual defendants or their immediate family members investigated by NHP or Metro.</p>	<p>Metro did not produce any additional documents after the Court issued its July 15, 2002 Order. Unredacted copies of the 55 Traffic Accident Reports involving immediate family members of Metro officers were not produced. (Leffler Aff. ¶17)</p> <p>Lt. Moody acknowledged that the steps Lt. Thornton identified as necessary to identify and produce the requested documents had not been</p>	<p>Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:</p>

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	<p>undertaken, despite the Court's reduction of the discoverable time period from ten years to five years. (Moody Dep. 87:9-17, 88:6-13, 93:7-10) As noted above, the Metro Defendants did not produce unredacted copies of the 55 reports identified via the e-mail inquiry, in direct violation of the Court's express order to do so. (Ex. 210, June 13, 2002 Hearing Transcript at 17-18 (#190); Leffler Aff. ¶17)</p> <p>Consequently, Metro has never disclosed the contact information of persons similarly situated to the DeLew family (<i>i.e.</i>, citizens involved in traffic collisions with Metro off-duty officers and their family members), despite the Court's plain orders to do so. (Rastello Aff. ¶8)</p> <p>Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed any law enforcement officers or immediate family members of same, which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of</p>	<p>Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.</p> <p>In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.</p> <p>(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)</p>

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	<p>protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.</p>	
<p><b>2nd Request No. 26:</b> All DUI arrest reports related to incidents involving any individual defendants or their immediate family members investigated by NHP or Metro.</p>	<p>The Metro Defendants did not identify or produce any DUI reports for any Metro Defendant or immediate family member of a Metro Defendant. (Leffler Aff. ¶18) Metro had the computer capability to search for such DUI reports, but did not do so. (Counterman Dep. 193:14-19, Moody Dep. 36:2-5, 106:4-107:6, 107:19-108:12)</p> <p>Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed any law enforcement officers or immediate family members of same, which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and</p>	<p>Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:</p> <p>Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional</p>

Document Request	Proof of Metro Defendants' Violations of Court's July 15, 2002 Order	Appropriate Sanction For Metro Defendants' Violations of Court's July 15, 2002 Order
	criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.	rights of citizens subjected to them.  In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.  (Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1 <sup>st</sup> Req/Nos. 3 and 6; and 2 <sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)
<u>2<sup>nd</sup> Request No. 32:</u> A list of all documents withheld on privilege grounds.	The Metro Defendants withheld responsive documents such as the Risk Manager's claim files and investigative files (Moody Dep. 70:22-71:6, 84:4-17, 96:18-25), but did not produce a privilege log. (Leffler Aff. ¶19)	Costs, including fees, of the Rule 30(b)(6) depositions and of this Motion.



**CATEGORY A:**

Metro's policy, procedure and practice pertaining to investigating traffic and criminal incidents involving Metro officers and their immediate family members from 1990 to the present including, but not limited to, the interpretation of the LVMPD Traffic Bureau Enforcement & Accident Investigations Manual and the LVMPD Manual

**METRO'S RULE 30(b)(6) AND COURT ORDER VIOLATIONS:**

Metro identified Raymond Flynn and Michael Zagorski as the PMK witnesses for Category A. Flynn did not review Metro's Traffic Bureau Enforcement and Traffic Investigations Manual in preparation for his deposition. (Flynn Dep. 6:25-7:15) Zagorski did not read the Office of Policy & Planning file or the Office Of Management file regarding the two 1995 policy changes. (Zagorski Dep. 24:4-15; 30:13-31:8)

Zagorski was unable to answer questions regarding Metro's policy of sole self-investigation including two 1995 Orders (62-95 and 73-95) which first rescinded the policy of sole self-investigation and then reinstated it a few months later. (Zagorski Dep. 25:9-17, 26:7-13, 28:12-17, 29:4-16, 30:13-31:8) Zagorski could not identity what precipitated the changes to the policies, which occurred a few months after Erin DeLew's death. (Zagorski Dep. 28:12 – 31:8) Nor did he make any attempt to inquire of the author of the policies, Undersheriff Winget, in preparation for his PMK deposition. (Zagorski Dep. 25:9-17, 26:7-13, 30:13-31:8)

Consequently, Plaintiffs were unable to obtain any testimony binding upon Metro with respect to Metro's policy, procedure and practice pertaining to investigating traffic and criminal incidents involving Metro officers and their immediate family members, which was needed to establish that Metro's customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those policies.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery request was designed to establish that Metro's policies of self-investigation were the moving force or cause of the alleged constitutional violations and that Metro's policy decisions constitute deliberate indifference to the rights of citizens subjected to these policies:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O, P and EE; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos.14, 15 17-21, 24-26 are identical.)



**Category A (February 2002 Notice of 30(b)(6) Depos):** Metro's policy, procedure and practice pertaining to investigating traffic and criminal incidents involving Metro officers and their immediate family members from 1990 to the present including, but not limited to, the interpretation of the LVMPD Traffic Bureau Enforcement & Accident Investigations Manual and the LVMPD Manual

Q. The first category that Metro has designated you as the PMK or person most knowledgeable is Metro's policy, procedure, and practice pertaining to investigating traffic and criminal incidents involving Metro officers and their immediate family members from 1990 to the present including, but not limited to, the interpretation of the LVMPD Traffic Bureau Enforcement and Accident Investigations Manual and the LVMPD Manual.

A. Yes.

Q. Is that your understanding, too?

A. Yeah.

Q. Did you review the Traffic Bureau Enforcement and Accident Investigations Manual as part of your preparation for today?

A. No, I did not.

Flynn Dep. 6:25-7:15

Q. In preparation for your deposition today, did you ask to review any file that the Office of Policy and Planning may have had on this policy of investigation of on-duty and off-duty accidents involving Metro officers and/or their immediate family members?

A. No, sir.

Q. Do you know if there were written comments made to that policy change in 1995?

A. I'm not aware of any.

Q. Did you ask anyone?

A. No.

Zagorski 24:4-15

Q. Do you know what precipitated or caused the policy change in 1995?

A. No, I don't.

Q. Did you make any inquiry regarding that preparation for today's deposition?

A. No. You mean as far as the policy change in '95?

Q. Yes.

A. No.

Zagorski Dep. 25:9-17

Q. . . . Do you know whether or not that September 1994 incident had anything to do with the policy change in 1995?

A. I don't know if it did or not.

Q. Did you make any inquiry of the Undersheriff or the Sheriff about that?

A. No, sir.

Zagorski Dep. 26:7-13

Q. It states, "Parallel investigations will be conducted with the NHP for serious injury/fatal accidents or large property damage accidents involving department vehicles, off-duty department members, or their immediate families in this jurisdiction"?

A. Yes.

Q. Was that one of the changes that was made in this PO, as far as you know?

A. Yes.

Q. Can you identify any other changes that were made as a result of PO-62-95?

A. Let me just look at it for a minute.

Q. Sure.

(There was a brief pause in the proceedings.)

A. I don't see any that I can identify.

Q. This order went out on August 8, 1995?

A. Yes.

Q. It basically amended the Department Manual, Section 5/103.29. Would you agree with that?

A. It amended it, yes, to include the paragraph you just read.

Q. You don't recall how this particular PO originated?

A. No, sir.

Q. You haven't reviewed any files or documents related to how this came about?

A. No, sir.

Q. You have no personal recollection of how it came about?

A. No.

Q. Let's look at -- I apologize that there are exhibit labels on. There are blank exhibit labels on page 3 and page 5, but it's all one exhibit. On page 5 of Zagorski Exhibit 3 is a document dated October 24, 1995, called Procedural Order, or PO-73-95?

A. Yes.

Q. Is that correct? Okay. What's your understanding as to what this Procedural Order did?

A. It addresses the policy, the prior one of 62-95.

Q. Okay. So the change that I see, to cut to the chase here, is that 1b under "Traffic Officer," a change, the language changes from, "Parallel investigations will be" -- excuse me -- "Parallel investigations will be conducted with the NHP for serious injury/fatal accidents or large property damage accidents involving department vehicles, off-duty department members, or their immediate families," it changes that to "may be conducted." Would you agree with that?

A. Yes, I would.

Q. It essentially changed it from a mandatory policy to a discretionary policy. Is that fair?

A. "Will" is pretty clear. And "may," it does change that.

Q. From mandatory to discretionary?

A. Yes.

Q. Do you know what precipitated the change reflected in PO-73-95?

A. No, sir.

Q. Have you reviewed any files in the Office of Management and Budget regarding this PO-73-95?

A. No, I have not reviewed any files.

Q. Both of these Procedural Orders, PO-62-95 and 73-95 are signed by Undersheriff Winget?

A. Yes. deposition?

A. No, sir.

Q. Is he still available at the department?

A. He's the Undersheriff.

Zagorski Dep. 28:12-31:8

Q. It states, "Parallel investigations will be conducted with the NHP for serious injury/fatal accidents or large property damage accidents involving department vehicles, off-duty department members, or their immediate families in this jurisdiction"?

A. Yes.

Zagorski Dep. 28:12-17

Q. It basically amended the Department Manual, Section 5/103.29. Would you agree with that?

A. It amended it, yes, to include the paragraph you just read.

Q. You don't recall how this particular PO originated?

A. No, sir.

Q. You haven't reviewed any files or documents related to how this came about?

A. No, sir.

Q. You have no personal recollection of how it came about?

A. No.

Zagorski Dep. 29:4-16

Q. It essentially changed it from a mandatory policy to a discretionary policy. Is that fair?

A. "Will" is pretty clear. And "may," it does change that.

Q. From mandatory to discretionary?

A. Yes.

Q. Do you know what precipitated the change reflected in PO-73-95?

A. No, sir.

Q. Have you reviewed any files in the Office of Management and Budget regarding this PO-73-95?

A. No, I have not reviewed any files.

Q. Both of these Procedural Orders, PO-62-95 and 73-95 are signed by Undersheriff Winget?

A. Yes.

Q. Did you speak with Undersheriff Winget regarding these POs in preparation for today's deposition?

A. No, sir.

Q. Is he still available at the department?

A. He's the Undersheriff.

Zagorski Dep. 30:13-31:8



**CATEGORY B:**

Any and all traffic accident or criminal investigations undertaken by Metro at the request of another law enforcement agency from 1990 to the present.

**METRO'S RULE 30(b)(6) AND COURT ORDER VIOLATIONS:**

Metro's PMK witness, Raymond Flynn, admitted that he did not review anything in preparation for this subject area. He admitted that he did not review any data or reports of criminal investigations undertaken by Metro at the request of another law enforcement agency. In fact, Flynn was not working criminal investigations between 1991 and 1997 and testified that he would not know where to start to locate reports of investigations conducted at the request of another law enforcement agency. (Flynn Dep. 13:10-22, 16:7-19)

Metro also designated Michael Zagorski as a witness for Category B. Mr. Zagorski admitted that he did not review any documents in preparation for this subject area and did not make any attempts to identify any incidents in which Metro conducted an investigation at the request of another law enforcement agency. (Zagorski Dep. 44:6-23, 47:1-4)

Consequently, Plaintiffs were unable to obtain any testimony binding upon Metro with respect to traffic accident or criminal investigations undertaken by Metro at the request of another law enforcement agency, which was needed to establish Plaintiffs' theory that local police agencies have an unspoken custom and practice of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those policies.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was needed to prove Metro's customs and practices of protecting members of the law enforcement community in deliberate indifference to citizens' constitutional rights, and that such customs and practices were the cause or moving force of the alleged violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)

**Category B (February 2002 Notice of 30(b)(6) Depos):** Any and all traffic accident or criminal investigations undertaken by Metro at the request of another law enforcement agency from 1990 to the present!

Q. . . . What, if anything, specifically did you review in preparation for this particular subject area?

A. Outside of my knowledge of our practices and culture, nothing.

Q. In other words, you haven't attempted to put together a list or survey of criminal investigations undertaken by Metro at the request of other law enforcement agencies?

A. No, and current practice with our division, that would be kind of difficult to do. We don't track them separately when there is a request of another agency.

Flynn Dep. 13:10-22

Q. You personally haven't gone back and looked at the criminal investigations undertaken by Metro at the request of another law enforcement agency 30 months prior to September 1994 or 30 months after September 1994?

A. I haven't, and we don't track them that way. I wouldn't know where to start.

Q. You have not done that?

A. No.

Q. That wasn't even your area? You weren't working that area between 1991 and 1997?

A. No, I wasn't working criminal investigations, no, sir.

Flynn Dep. 16:7-19

Q. As far as you know, Metro hasn't undertaken a review of its Traffic Accident Reports to determine whether or not there are accident reports where another law enforcement agency has called Metro and investigated it?

MR. ANGULO: Objection. Exceeds the scope of his designated testimony.

THE WITNESS: I don't know how that report would be identified.

BY MR. RASTELLO:

Q. If the report itself said, "We received a call from North Las Vegas" -

A. If it was articulated in the report?

Q. Yes. Then it could be identified?

A. Yes.

Q. You yourself, you haven't made any such attempt to identify those incidents?

A. No, sir.

Zagorski Dep. 44:6-23

Q. So with respect to category B, I take it that you haven't reviewed any documents in preparation for today's deposition relating to that category?

A. No, sir.

Zagorski Dep. 47:1-4





**CATEGORY C:**

Investigations by Metro of traffic and criminal incidents involving a Metro officer or an immediate family member of a Metro officer from 1990 to the present.

**METRO'S RULE 30(b)(6) AND COURT ORDER VIOLATIONS:**

Metro identified Raymond Flynn and Michael Zagorski as the PMK witnesses for Category C. Both Flynn and Zagorski admitted that they did not review any documents or investigations that fell within Category C in preparation for this deposition. (Flynn Dep. 17:19-23; Zagorski Dep. 50:4-19)

Flynn admitted that responsive investigation files could not be identified for production from the IAB Logs; a review of the IAB file itself was necessary to determine if the allegations were relevant under Plaintiffs' requests and the Courts' Orders. (Flynn Dep. 66:4-67:7) Metro's PMK witnesses were unprepared to identify and discuss any of the investigations conducted by Metro of traffic or criminal incidents involving Metro officers or immediate family members of Metro officers from the handful of produced traffic collision reports. (Flynn Dep. 66:16-67:7; Zagorski Dep. 52:6-13; Moody Dep. 105:15-24)

Consequently, Plaintiffs were unable to obtain any testimony binding upon Metro with respect to the investigations by Metro of traffic and criminal incidents involving Metro officers or immediate family members of a Metro officers, which was needed to establish Plaintiffs' theory that Metro has customs and practices of protecting Metro "insiders" from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those policies..

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos.14, 15 17-21, 24-26 are identical.)

**Category C (February 2002 Notice of 30(b)(6) Depos):** Investigations by Metro of traffic and criminal incidents involving a Metro officer or an immediate family member of a Metro officer from 1990 to present

Q. My question, Deputy Chief Flynn, is: Have you reviewed any investigations that might fall within Category C in preparation for today's deposition?

A. No, not specific investigations outside of the one that this case centers on.

Flynn Dep. 17:19-23

Q. A couple questions: Would it be difficult to determine whether or not the complaints listed in Exhibit 2 fell within one of those categories of Exhibit 1's Category C without actually looking at least at the brief of complaint?

A. I think what I said earlier, I go back the that. I know we talked about conspiracy. In a fraudulent investigation or concealment, you wouldn't find those without reading those. I recall also, our false report or truthfulness would probably be a summary of a complaint. But the other ones mentioned on the list, I don't recall seeing.

Q. So you would have to review the brief of complaint to see if those allegations were made?

A. If you wanted me to look for every one of those, yes.

Q. For example here, on Flynn Exhibit 2, page 27805, on February 13, 1995, IAB number 950206, it states, CRS 510.2, Subsection G-1, conduct unbecoming an employee.

A. Correct.

Q. That would be difficult to know --

A. It is an extremely broad charge. It's based on a Civil Service rule. There is about that many things you can do for conduct unbecoming.

Q. So you would have to look at the complaint?

A. To know what exactly it is. It could be music too loud at a party that your neighbors are complaining about, all the way to a criminal act.

Flynn Dep. 66:4-67:7

Q. My same question: Can you identify the Metro-affiliated driver?

A. The last name of driver number one, again the at-fault driver is Gemma. I've aware of two employees that have that same last name, but not the same first name. I have to assume that that would have been it.

Q. The third one is LVMPD 03129. The event number is LVMPD 921014. Can you identify the Metro-affiliated driver in that case?

A. I don't know a Fogerty or a Fleming.  
Moody Dep. 105:15-24

Number six states, "All reports, memoranda, summaries or other documents relating to the investigation by Metro and NHP of injury or fatal traffic collisions involving any law enforcement officer or an immediate family of a law enforcement officer during the five years preceding and five years following the investigation of Erin DeLew death."

Q. Did I read that correctly?

A. Looks like it.

Q. Did you review any documents that might be responsive to that request number?

A. Can I see it, please?

Q. Sure.

(There was a brief pause in the proceedings.)

A. No, I did not review any document relating to that.  
Zagorski Dep. 50:4-19

A. Looks like 920629-1055.

Q. That's the same number on Exhibit 5?

A. Yes.

Q. Can you tell from reviewing the two-page Traffic Accident Report, which is event number 920629-1055, which of the two drivers is affiliated with Metro?

A. I don't recognize the names.  
Zagorski Dep. 52:6-13



**CATEGORY D:**

Metro's policy procedure, training, and practice for investigating driving under the influence or driving while intoxicated as of September 1994 and any subsequent revisions or proposed revisions including, but not limited to, the interpretation of the LVMPD Traffic Bureau Enforcement & Accident Investigations Manual and the LVMPD Manual.

**METRO'S RULE 30(b)(6) AND COURT ORDER VIOLATIONS:**

Chief Michael Zagorski, Metro's PMK witness for Category D (Procedure and Training for Investigating DUI cases), could not testify regarding the policies or procedures used in 1994 in DUI cases. (Zagorski Dep. 59:25-60:11, 72:16-22) Zagorski has not made a DUI arrest for 20 years, and he has never been a trainer of DUI investigative or enforcement procedures at Metro. (Zagorski Dep. 58:16-59:11, 59:25-60:11, 72:16-22) Consequently, Plaintiffs were unable to obtain any testimony binding upon Metro regarding Metro's DUI training, procedures, and practice for investigating DUI incidents as of 1994, which was needed to establish the special treatment Mrs. Wagner received on the evening of Erin DeLew's death.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was calculated to establish Metro's standard operating procedures for the investigation of driving under the influence as of September 1994 and that Metro officers departed from those procedures and accorded Janet Wagner special treatment:

Deem it established that Metro officers departed from their standard procedures for investigation of DUI in the case of Janet Wagner and accorded her special treatment and/or preclude Metro from introducing at trial evidence of Metro's standard operating procedures for the investigation of driving under the influence as of September 1994 or evidence opposing Plaintiffs' assertion that Metro officers departed from those procedures and accorded Janet Wagner special treatment.

(Sanction Requests for PMK categories D and I and 1<sup>st</sup> Req/No. 5 are virtually identical.)

**Category D (February 2002 Notice of 30(b)(6) Depos):** Metro's policy procedure, training, and practice for investigating driving under the influence or driving while intoxicated as of September 1994 and any subsequent revisions or proposed revisions including, but not limited to, the interpretation of the LVMPD Traffic Bureau Enforcement & Accident Investigations Manual and the LVMPD Manual.

Q. When was the last time you made a DUI arrest?

A. Probably 20 years ago.

Q. Are you a trainer of DUI investigative or enforcement procedures at Metro?

A. No, sir.

MR. ANGULO: At the present time?

BY MR. RASTELLO:

Q. At the present time?

A. No, sir.

Q. Have you been in the last 15 years?

A. Last 15 years, training in relationships to DUI?

Q. Yes.

A. No.

Q. When was the last time you testified in a court of law regarding a DUI arrest?

A. I would say, again, about 20 years ago.

Q. Have you ever been designated as a Metro trainer in the area of DUI enforcement and, if so, when?

A. No, not in DUI.

Zagorski Dep. 58:16-59:11

Q. Do you know how many blood draws a Metro officer is authorized to obtain from a DUI suspect?

A. I believe it's two.

Q. Typically, are those draws separated by a period of time?

A. They're done in a facility at the jail or the hospital, depending on the circumstances.

Q. Well, are you familiar with the procedures?

A. No, not today.

Q. Are you familiar with the procedures as they existed in 1994?

A. Not specifically.

Zagorski Dep. 59:25-60:11

Q. Well, is it fair to say that you're not specifically aware of the procedures that were used in 1994 in DUI felony cases in terms of extracting blood samples?

A. Specifically of extracting blood samples, I would say no, I'm not familiar with what they were doing in '94.

Zagorski Dep. 72:16-22





**CATEGORY E:**

All reports, memoranda, summaries or other documents relating to the investigation by Metro of traffic and criminal incidents involving any Metro law enforcement personnel or an immediate family member of Metro personnel during the five years preceding and the five years following the investigation of Erin DeLew's death.

**METRO'S RULE 30(b)(6) AND COURT ORDER VIOLATIONS:**

Metro's PMK witnesses, Raymond Flynn and Michael Zagorski, admitted they did not review any reports, memoranda, summaries or documents relating to this subject matter in preparation for the Rule 30(b)(6) depositions. (Flynn Dep. 18:18-19:11; Zagorski Dep. 50:4-19) Consequently, Zagorski was unable to discuss any of the investigations conducted by Metro of traffic or criminal incidents involving Metro officers or immediate family members of Metro officers. (Zagorski Dep. 51:10-15, 52:6-13)

These PMK witnesses were unprepared to identify and discuss any of the investigations conducted by Metro of traffic or criminal incidents involving Metro officers or immediate family members of Metro officers from the handful of produced traffic collision reports. (Flynn Dep. 66:16-67:7; Zagorski Dep. 52:6-13; Moody Dep. 105:15-24)

Consequently, Plaintiffs were unable to obtain any testimony binding upon Metro relating the investigation by Metro of traffic and criminal incidents involving any Metro law enforcement personnel or an immediate family, which was needed to establish Plaintiffs' theory that Metro has customs and practices of protecting Metro insiders from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those policies.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O, P and EE; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos.14, 15 17-21, 24-26 are identical.)

**Category E (February 2002 Notice of 30(b)(6) Depos):** All reports, memoranda, summaries or other documents relating to the investigation by Metro of traffic and criminal incidents involving any Metro law enforcement personnel or an immediate family member of Metro personnel during the five years preceding and five years following the investigation of Erin DeLew's death.

The question is: I take it, with respect to Category E, in preparation for today's deposition, you haven't specifically reviewed any specific reports, memoranda or summaries or other documents relating to those specific incidents?

A. I did review a log sheets from Internal Affairs from approximately that time period. Some of those would be almost impossible to find. For example, we don't track immediate family members. Sometimes we may never even know if the person is an immediate family member.

Q. So you looked at some Internal Affairs Bureau logs?

A. Correct, sir.

Q. But not individual Internal Affairs reports or memoranda?

A. The only individual Internal Affairs report and memoranda that I reviewed is the one concerning this case.

Flynn Dep. 18:18-19:11

Q. So you would have to review the brief of complaint to see if those allegations were made?

A. If you wanted me to look for every one of those, yes.

Q. For example here, on Flynn Exhibit 2, page 27805, on February 13, 1995, IAB number 950206, it states, CRS 510.2, Subsection G-1, conduct unbecoming an employee.

A. Correct.

Q. That would be difficult to know --

A. It is an extremely broad charge. It's based on a Civil Service rule. There is about that many things you can do for conduct unbecoming.

Q. So you would have to look at the complaint?

A. To know what exactly it is. It could be music too loud at a party that your neighbors are complaining about, all the way to a criminal act.

Flynn Dep. 66:16-67:7

Number six states, "All reports, memoranda, summaries or other documents relating to the investigation by Metro and NHP of injury or fatal traffic collisions involving any law enforcement officer or an immediate family of a law enforcement officer during the five years preceding and five years following the investigation of Erin DeLew death."

Q. Did I read that correctly?

A. Looks like it.  
Q. Did you review any documents that might be responsive to that request number?

A. Can I see it, please?

Q. Sure.

(There was a brief pause in the proceedings.)

A. No, I did not review any document relating to that.

Zagorski Dep. 50:4-19

Q. It says, "The following traffic reports involve off-duty events," and it lists a number of reports. I think, I haven't counted them but between 40 and 50. Do you recognize those as Metro event numbers?

A. Looks like it, yeah.

Zagorski Dep. 51:10-15

A. Looks like 920629-1055.

Q. That's the same number on Exhibit 5?

A. Yes.

Q. Can you tell from reviewing the two-page Traffic Accident Report, which is event number 920629-1055, which of the two drivers is affiliated with Metro?

A. I don't recognize the names.

Zagorski Dep. 52:6-13

Q. My same question: Can you identify the Metro-affiliated driver?

A. The last name of driver number one, again the at-fault driver is Gemma. I've aware of two employees that have that same last name, but not the same first name. I have to assume that that would have been it.

Q. The third one is LVMPD 03129. The event number is LVMPD 921014. Can you identify the Metro-affiliated driver in that case?

A. I don't know a Fogerty or a Fleming.

Moody Dep. 105:15-24



**CATEGORY F:**

Use of Preliminary Breath Test Devices within Metro during the five years preceding and five years following the investigation of Erin DeLew's death including, but not limited to, interpretation of the LVMPD Traffic Bureau Enforcement & Accident Investigations Manual and the LVMPD Manual.

**METRO'S RULE 30(b)(6) AND COURT ORDER VIOLATIONS:**

Metro's PMK witness designated to testify regarding this subject, Michael Zagorski, admitted that he had not reviewed any documents specific to Preliminary Breath Test devices at Metro in preparation for his deposition. (Zagorski Dep. 61:21-62:3) Zagorski could not testify regarding the policies or procedures used in 1994 in DUI cases. (Zagorski Dep. 59:25-60:11, 72:16-22) Zagorski has not made a DUI arrest for 20 years, and he has never been a trainer of DUI investigative or enforcement procedures at Metro. (Zagorski Dep. 58:16-59:11, 59:25-60:11, 72:16-22)

Consequently, Plaintiffs were unable to obtain material testimony binding upon Metro regarding use of Preliminary Breath Test Devices within Metro as of 1994, which was needed to establish the standard operating procedures at that time in order to contrast them against the special treatment accorded Mrs. Wagner during the felony DUI investigation of Erin DeLew's death.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was tailored to establish that the Metro officers had available at the scene of the Erin DeLew fatality in September 1994 Preliminary Breath Test Devices to administer on Janet Wagner, and that it was Metro's standard operating procedures to use such devices at the scene of traffic collisions and that Metro departed from those procedures and accorded Janet Wagner special treatment::

Deem it established that Metro officers had available at the scene of the Erin DeLew fatality in September 1994 Preliminary Breath Test Devices to administer on Janet Wagner, that it was the Metro's standard operating procedures to use such devices at the scene of traffic collisions, and that Metro officers departed from those procedures and accorded Janet Wagner special treatment and/or preclude Metro from introducing at trial evidence of the availability of Preliminary Breath Test Devices in September 1994 or their standard operating procedures regarding the use such devices at traffic collision scenes.

**Category F (February 2002 Notice of 30(b)(6) Depos):** Use of Preliminary Breath Test Devices within Metro during the five years preceding and five years following the investigation of Erin DeLew's death including, but not limited to, interpretation of the LVMPD Traffic Bureau Enforcement & Accident Investigations Manual and the LVMPD Manual.

Q. When was the last time you made a DUI arrest?

A. Probably 20 years ago.

Q. Are you a trainer of DUI investigative or enforcement procedures at Metro?

A. No, sir.

MR. ANGULO: At the present time?

BY MR. RASTELLO:

Q. At the present time?

A. No, sir.

Q. Have you been in the last 15 years?

A. Last 15 years, training in relationships to DUI?

Q. Yes.

A. No.

Q. When was the last time you testified in a court of law regarding a DUI arrest?

A. I would say, again, about 20 years ago.

Q. Have you ever been designated as a Metro trainer in the area of DUI enforcement and, if so, when?

A. No, not in DUI.

Zagorski Dep. 58:16-59:11

Q. Do you know how many blood draws a Metro officer is authorized to obtain from a DUI suspect?

A. I believe it's two.

Q. Typically, are those draws separated by a period of time?

A. They're done in a facility at the jail or the hospital, depending on the circumstances.

Q. Well, are you familiar with the procedures?

A. No, not today.

Q. Are you familiar with the procedures as they existed in 1994?

A. Not specifically.

Zagorski Dep. 59:25-60:11

Q. Do you know when Metro first purchased Preliminary Breath Test devices?

A. I would say somewhere around '91, '92. That would be my guess.

Q. In preparation for today's deposition, did you review any documents?

A. I looked at this document here as it related to PBTs and I tried to recall. I believe it was a grant that was provided to the department where they purchased them. They were somewhat unreliable. They needed to be calibrated frequently. I think that was around '91, '92.

Q. When you said you reviewed this, you were referring to the Notice of Deposition?

A. I'm sorry, yes. I'm referring to -- what is it, Exhibit 2?

Q. Right. In preparation for today's deposition, did you review any of the grants that you referenced?

A. No, sir. I recall that.

Q. So in preparation for today's deposition, you haven't reviewed anything specific to the Preliminary Breath Test devices at Metro?

A. No.

Zagorski Dep. 61:5-62:3

Q. Well, is it fair to say that you're not specifically aware of the procedures that were used in 1994 in DUI felony cases in terms of extracting blood samples?

A. Specifically of extracting blood samples, I would say no, I'm not familiar with what they were doing in '94.

Zagorski Dep. 72:16-22





**CATEGORY G:**

The Metro policy and practice concerning the use of blood-alcohol kits in DUI enforcement, including, but not limited to, the use of the type of kit utilized by law enforcement personnel with Office Wagner's wife on September 27, 1994.

**METRO'S RULE 30(b)(6) AND COURT ORDER VIOLATIONS:**

Chief Michael Zagorski, Metro's PMK witness for Category G, could not testify regarding the policies or procedures used in 1994 in DUI felony cases in terms of extracting blood samples. (Zagorski Dep. 59:25-60:11, 72:16-22) Zagorski could not testify regarding the policies or procedures used in 1994 in DUI cases. (Zagorski Dep. 59:25-60:11, 72:16-22) Zagorski has not made a DUI arrest for 20 years, and he has never been a trainer of DUI investigative or enforcement procedures at Metro. (Zagorski Dep. 58:16-59:11, 59:25-60:11, 72:16-22) Consequently, Plaintiffs were unable to obtain material testimony binding upon Metro regarding Metro's policy and practice concerning the use of blood-alcohol kits in DUI enforcement, including the type of kit utilized by law enforcement personnel with Office Wagner's wife on September 27, 1994.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was tailored to establish that it was Metro's standard operating procedure to use at two blood-alcohol kits to take at least two blood draws separated by time in suspected felony DUI cases and that Metro officers departed from those procedures and accorded Janet Wagner special treatment:

Deem it established that Metro officers departed from their standard procedures to use two blood-alcohol kits to take at least two blood draws separated by time in suspected felony DUI cases and accorded Janet Wagner special treatment and/or preclude Metro from introducing at trial evidence opposing Plaintiffs' assertion that it was Metro's standard operating procedures to use two blood-alcohol kits to take at least two blood draws separated by time in suspected felony DUI cases and that Metro officers departed from those procedures and accorded Janet Wagner special treatment.

**Category G (February 2002 Notice of 30(b)(6) Depos):** The Metro policy and practice concerning the use of blood-alcohol kits in DUI enforcement, including, but not limited to, the use of the type of kit utilized by law enforcement personnel with Office Wagner's wife on September 27, 1994.

Q. When was the last time you made a DUI arrest?

A. Probably 20 years ago.

Q. Are you a trainer of DUI investigative or enforcement procedures at Metro?

A. No, sir.

MR. ANGULO: At the present time?

BY MR. RASTELLO:

Q. At the present time?

A. No, sir.

Q. Have you been in the last 15 years?

A. Last 15 years, training in relationships to DUI?

Q. Yes.

A. No.

Q. When was the last time you testified in a court of law regarding a DUI arrest?

A. I would say, again, about 20 years ago.

Q. Have you ever been designated as a Metro trainer in the area of DUI enforcement and, if so, when?

A. No, not in DUI.

Zagorski Dep. 58:16-59:11

Q. Do you know how many blood draws a Metro officer is authorized to obtain from a DUI suspect?

A. I believe it's two.

Q. Typically, are those draws separated by a period of time?

A. They're done in a facility at the jail or the hospital, depending on the circumstances.

Q. Well, are you familiar with the procedures?

A. No, not today.

Q. Are you familiar with the procedures as they existed in 1994?

A. Not specifically.

Zagorski Dep. 59:25-60:11

Q. Well, is it fair to say that you're not specifically aware of the procedures that were used in 1994 in DUI felony cases in terms of extracting blood samples?

A. Specifically of extracting blood samples, I would say no, I'm not familiar with what they were doing in '94.

Zagorski Dep. 72:16-22



**CATEGORY H:**

All fatal traffic collisions reports generated by Metro during the years 1996 and 1997.

**METRO'S RULE 30(b)(6) AND COURT ORDER VIOLATIONS:**

Metro represented that it destroys traffic collision reports after five years and therefore could not produce reports during the most relevant years i.e. 1989 to 1995. (Rastello Aff. ¶3) Based on this representation, Plaintiffs and the Court narrowed the document request to the years 1996 and 1997. (Rastello Aff. ¶3) Plaintiffs learned during the Rule 30(b)(6) depositions that Metro's representation was false and that Metro retains Traffic Accident Reports permanently. (Lang Dep. 20:19-21:2; Ex. 204; Redfairn Dep. 16:22-17:5) However, Metro never did produce the pre-1995 reports. (Rastello Aff. ¶4)

In addition, during the June 13, 2002 hearing, the Magistrate Judge ordered Metro to produce unredacted copies of the Traffic Accident Reports it had produced for the narrowed time period. (Ex. 210, Hearing Trans. 30:5-23, June 13, 2002 (#190)) However, Metro never did so. (Leffler Aff. ¶5)

Metro employees 200 people in its Records Bureau and that it had ample resources (both human and computer) to identify and produce responsive documents. (Lang Dep. 22:23-23:11, 41:9-23, 43:17-20)

Metro's PMK witness designated to testify regarding records production, Theodore Moody, did not review any documents in preparation for the deposition, was not clear on what the court ordered with regard to redactions, and did not know whether Metro had produced an unredacted copy of the 1996 and 1997 fatal traffic collision reports. (Moody Dep. 13:14-14:2) Lieutenant Moody also did not review any of the reports produced by Metro. (Moody Dep. 15:14-20)

Detective William Redfairn was designated as Metro's PMK witness to testify regarding the process of investigating and generating fatal traffic collision reports. (Redfairn Dep. 10:20-11:6) Detective Redfairn did not review any fatal traffic collision reports generated by Metro during 1996 and 1997 and, therefore, was not able to answer anything but generalized questions. (Redfairn Dep. 12:3-21)

Consequently, Plaintiffs were unable to obtain material testimony binding upon Metro regarding Metro's standard operating procedures in the investigation of fatal traffic collisions during the 1994 time period which was needed to show the Metro Defendants' departure from such standard operating procedures and the special treatment the Metro Defendants accorded Mrs. Wagner during the investigation of the vehicular homicide of Erin DeLew.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was calculated to establish Metro's standard operating procedures for the investigation of fatal traffic collisions as of September 1994 and that Metro officers departed from those procedures and accorded Janet Wagner special treatment:

Deem it established that Metro officers departed from their standard procedures for investigation of fatal traffic collisions in the case of Janet Wagner and accorded her special treatment and/or preclude Metro from introducing at trial evidence of Metro's standard operating procedures for the investigation of fatal traffic collisions or evidence opposing Plaintiffs' assertion that Metro officers departed from those procedures and accorded Janet Wagner special treatment.

(Sanction Requests for PMK H and 1<sup>st</sup> Req/No. 4 are virtually identical.)

**Category H (February 2002 Notice of 30(b)(6) Depos):** All fatal traffic collision reports generated by Metro during the years 1996 and 1997.

Q. ...Traffic investigation reports for an injury or fatal are 10 years, mandatory retention with a permanent file being in Records.

Q. When it says "Permanent File in Records," that means that Metro has, even though the minimum period is 10 years, Metro has decided to keep a permanent record?

A. Yes, there would be a permanent file maintained in Records.

Q. Would you repeat what the category is, please? Traffic --

A. Traffic/citations/incident reports is two years. Traffic/accident investigations for injury or fatal are 10 years with a permanent file in records.

Lang Dep. 20:19-21:7

Q. Ms. Lang, would you tell us how someone in your department would go about locating a filmed traffic collision report, if they had an event number? What would they do?

A. They would request copies of whatever we have under that event number and Records personnel would produce the documents off of the film.

Q. How would the Records person do that? Assuming, I guess, it's on the KAR system, they would go to the reel?

A. If it's on the KAR system, they would go to the computer that is attached to the KAR. They would run up the event number. It would tell them what reel it was on. They would take the reel and hit "print."

Lang Dep. 22:23-23:11

Q. How many additional people can you call upon when needed?

A. I can assign every one of my employees to do any tasks, depending on the need. Those people who are assigned regularly as that part of their duties is about five a day. That's not a question that I can answer. If I needed to, I could apply substantial amounts of personnel.

Q. How many people are under your section?

A. In the Records Bureau, there is 190. If you want it broken down by section --

Q. You're the Records Section Director?

A. Records Bureau.

Q. So all 190 essentially report to you?

A. Right.

Lang Dep. 41:9-23

Q. Approximately how many temporary employees?

A. 20.

Q. So at the peak, 210 employees?

A. Right.

Lang Dep. 43:17-20

Q. What specifically have you done in preparation for this deposition, though?

A. Other than reviewing the orders to produce documents, nothing.

Q. Do you have those orders with you?

A. I do not.

Q. Did you make any sort of checklist of things that the department has produced?

A. No, I did not.

Moody Dep. 6:18-7:1

Q. Did you come to learn that the court ordered unredacted reports to be produced?

A. I'm not clear on what the court ordered with regard to the redactions.

Q. Do you know whether or not Metro has produced an unredacted copy of the 1996 and 1997 Fatal Traffic Collision Reports?

A. The reports that were originally produced unredacted should still be in possession of our attorneys.

Q. As you sit here, you don't know whether or not a copy of those have been made and delivered to Plaintiffs?

A. I don't know.

Moody Dep. 13:14-14:2

Q. Have you reviewed the 1996 and 1997 Traffic Collision Reports?

A. No.

Q. Have you seen the redacted copies of the 1996 and 1997 Traffic Collision Reports produced to Plaintiffs?

A. No, I have not.

Moody Dep. 15:14-20

MR. RASTELLO: Okay. Peter, I only had him down for H and I. Am I mistaken?

MR. ANGULO: No, he's been identified as the person most knowledgeable for the department who can testify about the process of



generating Fatal Traffic Collision Reports, that investigation process of that, and also for DUI arrests.

MR. RASTELLO: Okay. So would that be a piece of H and I then?

MR. ANGULO: That's correct. As we indicated to you in the letter, you wanted to have it broken down.

Redfairn Dep. 10:20-11:6

Q. Maybe I can short-circuit this. Other than the reports that were generated in connection with the Wager-DeLew fatality, did you review any other traffic accident reports?

A. No.

Q. So you have not reviewed and are not in a position today to identify the Fatal Traffic Collision Reports generated by Metro during the years 1996 and 1997?

A. I'm not sure I understand what you're saying.

Q. Would you read the question back? (The record was read back by the Reporter.)

A. I have not reviewed them. However, if you asked me questions, generalized questions, I might be able to provide you answers with that.

Q. Have you reviewed the DUI Arrest Reports generated by the named Metro defendants in this case during the years 1996 and 1997?

A. No.

Redfairn Dep. 12:3-21

Q. Do you know for what period of time a Fatal Traffic Accident Report is retained?

A. As far as I know in Records, it's kept forever. I don't know of anything that's short.

Q. How about Traffic Accident Reports involving injury?

A. Same thing.

Q. Same thing?

A. It gets microfilmed, is my understanding.

Redfairn Dep. 16:22-17:5



**CATEGORY I:**

All DUI arrest reports generated by any named Metro Defendant during the years 1996 and 1997.

**METRO'S RULE 30(b)(6) AND COURT ORDER VIOLATIONS:**

Metro represented that it destroyed DUI Arrest Reports after five years and therefore could not produce reports during the most relevant years i.e. 1991 to 1994. (Rastello Aff. ¶3) Based on this representation, Plaintiffs and the Court narrowed the document request to the years 1996 and 1997. (Rastello Aff. ¶3) Plaintiffs learned during the Rule 30(b)(6) depositions that Metro's representation was false and that Metro retains DUI Arrest Reports for 85 years. (Lang Dep. 20:3-12; Ex. 204) However, Metro never did produce the 1991-1994 reports, even though it could easily have done so. (Rastello Aff. ¶4; Moody Dep. 30:21-31:4; Counterman 194:15-22)

In addition, during the June 13, 2002 hearing, the Magistrate Judge ordered Metro to produce unredacted copies of the DUI Arrest Reports it had produced for the narrowed time period. (Ex. 210, Hearing Trans. 30:5-23, June 13, 2002 #190) However, Metro never did so. (Leffler Aff. ¶6)

Metro's PMK witness designed to testify regarding records production, Theodore Moody, did not review any documents in preparation for the deposition, did not review Metro's production of DUI arrest reports to make sure it was complete, accurate, and legible. (Moody Dep. 6:18-7:1, 28:2-12)

Detective William Redfairn was designated as Metro's PMK witness to testify regarding the process of investigating and generating DUI arrest reports. Detective Redfairn did not review the DUI arrest reports generated by the Metro defendants during 1996 and 1997 and, therefore, was not able to answer anything but generalized questions. (Redfairn Dep. 12:19-21)

Consequently, Plaintiffs were unable to obtain material testimony binding upon Metro regarding Metro's standard operating procedures in the investigation of DUI incidents during the 1994 time period to show the departure from such procedures and the special treatment accorded to Mrs. Wagner during the investigation of the vehicular homicide of Erin DeLew.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was calculated to establish Metro's standard operating procedures for the investigation of driving under the influence as of September 1994 and that Metro officers departed from those procedures and accorded Janet Wagner special treatment:

Deem it established that Metro officers departed from their standard procedures for investigation of DUI in the case of Janet Wagner and accorded her special treatment and/or preclude Metro from introducing at trial evidence of Metro's standard operating procedures for the investigation of driving

under the influence as of September 1994 or evidence opposing Plaintiffs' assertion that Metro officers departed from those procedures and accorded Janet Wagner special treatment.

(Sanction Requests for PMK categories D and I and 1<sup>st</sup> Req/No. 5 are virtually identical.)

**Category I (February 2002 Notice of 30(b)(6) Depos):** All DUI arrest reports generated by any named Metro defendant during the years 1996 and 1997.

Q. For what period of time is the film or fiche maintained?

A. For what category?

Q. Let's say DUI arrest reports.

A. An arrest report would be maintained 85 years or five years after the confirmed death of the individual.

Q. 85 years?

A. Is a retention on an arrest document, an arrest report.

Lang Dep. 20:3-12

Q. Ms. Lang, would you tell us how someone in your department would go about locating a filmed traffic collision report, if they had an event number? What would they do?

A. They would request copies of whatever we have under that event number and Records personnel would produce the documents off of the film.

Q. How would the Records person do that? Assuming, I guess, it's on the KAR system, they would go to the reel?

A. If it's on the KAR system, they would go to the computer that is attached to the KAR. They would run up the event number. It would tell them what reel it was on. They would take the reel and hit "print."

Lang Dep. 22:23-23:11

Q. Assuming that an officer properly codes a drunk driving arrest as a 409, your people in Communications would input that?

A. Whatever he told us.

Q. Okay. Then theoretically, Information Technologies could run a list of all the 409s that occurred last month, for example?

A. Yes.

Counterman Dep. 194:15-22

Q. What specifically have you done in preparation for this deposition, though?

A. Other than reviewing the orders to produce documents, nothing.

Q. Do you have those orders with you?

A. I do not.

Q. Did you make any sort of checklist of things that the department has produced?

A. No, I did not.

Moody Dep. 6:18-7:1

Q. Did you come to learn that the court ordered unredacted reports to be produced?

A. I'm not clear on what the court ordered with regard to the redactions.

Q. Do you know whether or not Metro has produced an unredacted copy of the 1996 and 1997 Fatal Traffic Collision Reports?

A. The reports that were originally produced unredacted should still be in possession of our attorneys.

Q. As you sit here, you don't know whether or not a copy of those have been made and delivered to Plaintiffs?

A. I don't know.

Moody Dep. 13:14-14:2

Q. Did you redact information from those DUI police reports?

A. No, no.

Q. Did you review the DUI Arrest Reports for quality of printing and legibility?

A. No, I didn't.

Q. How many DUI Arrest Reports approximately were produced for each Defendant?

A. I don't remember now. I'm sorry.

Q. Are we talking a large volume or --

A. I don't remember.

Moody Dep. 28:2-12

Q. It could have been done for the years 1994 and 1995 as well?

A. Had we been instructed to do it for 1994 and '95, I don't know, because to fill -- we're talking about the DUI? Oh, yes, for the DUI requests. I'm sorry. I was thinking you had asked me the same question with regard to H. Yes, we could undertake to do the same process technically and do it for '94 and '95.

Moody Dep. 30:21-31:4

Q. Have you reviewed the DUI Arrest Reports generated by the named Metro defendants in this case during the years 1996 and 1997?

A. No.

Redfairn Dep. 12:18-21

Q. For what period of time are DUI Arrest Reports retained?

A. As far as my knowledge goes, it's forever. That's why they're microfiched. They can keep them forever.

Redfairn Dep. 19:17-21



**CATEGORY K:**

All reports, memoranda, summaries or other documents relating to the investigation by Metro of alleged wrongful conduct committed by any law enforcement officer or an immediate family member of a law enforcement officer during the five years preceding and the five years following investigation of Erin DeLew's death.

**METRO'S RULE 30(b)(6) AND COURT ORDER VIOLATIONS:**

Metro's designated PMK witness, Raymond Flynn, admitted that he did not review any documents outside the files relating to the DeLew incident for Category K and, therefore, would be unable to answer any questions about any other IAB allegations beyond the scope of the DeLew incident. (Flynn Dep. 21:3-14, 87:4-88:1. Flynn admitted that pertinent investigation files could not be identified from the Internal Affairs Log without a review of the complaint to determine if the allegations were relevant. (Flynn Dep. 66:16-67:7)

Metro's PMK witnesses were unprepared to identify and discuss any of the investigations conducted by Metro of traffic or criminal incidents involving Metro officers or immediate family members of Metro officers from the handful of produced traffic collision reports. (Flynn Dep. 66:16-67:7; Zagorski Dep. 52:6-13; Moody Dep. 105:15-24)

Consequently, Plaintiffs were unable to obtain material testimony binding upon Metro regarding Metro's investigations of alleged unlawful conduct committed by law enforcement officers or immediate family members of same, which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those policies..

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.



(Sanctions Requests for PMK categories A, C, E, K, L, M, O, P and EE; 1<sup>st</sup>  
Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos.14, 15 17-21, 24-26 are identical.)

**Category K (February 2002 Notice of 30(b)(6) Depos):** All reports, memoranda, summaries or other documents relating to the investigation by Metro of alleged wrongful conduct committed by any law enforcement officer or an immediate family member of a law enforcement officer during the five years preceding and five years following the investigation of Erin DeLew's death.

Q. Category K, I take it your answer would be the same, that is, that you haven't reviewed any specific documents falling within this category other than the Internal Affairs investigation done in this case, that being the Erin DeLew fatality?

A. Correct, within this time period. I'm familiar with cases since I've been in charge of investigations.

Q. But you haven't reviewed any within this time period?

A. Outside of the case relating to this incident here.

Flynn Dep. 21:3-14

Q. So you would have to review the brief of complaint to see if those allegations were made?

A. If you wanted me to look for every one of those, yes.

Q. For example here, on Flynn Exhibit 2, page 27805, on February 13, 1995, IAB number 950206, it states, CRS 510.2, Subsection G-1, conduct unbecoming an employee.

A. Correct.

Q. That would be difficult to know --

A. It is an extremely broad charge. It's based on a Civil Service rule. There is about that many things you can do for conduct unbecoming.

Q. So you would have to look at the complaint?

A. To know what exactly it is. It could be music too loud at a party that your neighbors are complaining about, all the way to a criminal act.

Flynn Dep. 66:16-67:7

Q. There are approximately 11 Metro Defendants, individual Metro Defendants in this case. My question to you is: In preparation for this deposition, have you reviewed any of the Internal Affairs files that may pertain to those individual Defendants?

A. I only read the one having to do with this. It's news to me if IAB maintains a separate file on employees.

Q. I guess I'm not wording my question very well. So let me try it again. Did you seek, in preparation for this deposition, to identify other Internal Affairs complaints or investigations relating to the individual Metro Defendants in this case?

A. Beyond the DeLew incident?

Q. Yes.

A. No.

Q. So if I were to pull out any complaints that I might have relating to those individual Defendants, it's safe to say that you have not reviewed those in preparation for today's deposition?

A. If there are other IAB allegations beyond the scope of the DeLew incident, I have no idea what you're talking about.  
Flynn Dep. 87:4-88:1

Q. My same question: Can you identify the Metro-affiliated driver?

A. The last name of driver number one, again the at-fault driver is Gemma. I've aware of two employees that have that same last name, but not the same first name. I have to assume that that would have been it.

Q. The third one is LVMPD 03129. The event number is LVMPD 921014. Can you identify the Metro-affiliated driver in that case?

A. I don't know a Fogerty or a Fleming.  
Moody Dep. 105:15-24

A. Looks like 920629-1055.

Q. That's the same number on Exhibit 5?

A. Yes.

Q. Can you tell from reviewing the two-page Traffic Accident Report, which is event number 920629-1055, which of the two drivers is affiliated with Metro?

A. I don't recognize the names.  
Zagorski Dep. 52:6-13

✓

✓

**CATEGORIES L AND M:**

All notice of claims for damages and civil lawsuits, actions, or complaints of alleged wrongful conduct committed by any named Metro Defendant or an immediate family member of a named Metro Defendant and all notice of claims for damages against any Metro officer during the five years preceding and five years following the investigation of Erin DeLew's death.

**METRO'S RULE 30(b)(6) AND COURT ORDER VIOLATIONS:**

Even though Lt. Moody made a copy of each Notice of Claim and gave the copies to Metro's counsel (Moody Dep. 51:24-52:17), the Metro Defendants did not produce any of the Notice of Claims requested in No. 14 of the Second Requests so that Plaintiffs might use them during the PMK depositions. (Leffler Aff. ¶9; Moody Dep. 70:22-71:6, 84:4-17) Metro's PMK witness designated to testify regarding records production for various categories, Theodore Moody, did not review any documents in preparation for the deposition. (Moody Dep. 6:18-7:1)

Lt. Moody testified that Metro's computer systems track every civil action filed against any Metro officer from receipt of the complaint through payment or settlement. (Moody Dep. 40:8-41:1, 42:18-43:3, 48:17-49:1, 50:6-14) Lt. Moody testified that a list of civil actions could have been generated from Metro's computer databases. (Moody Dep. 51:24-53:3) Yet, Metro did not produce any list of civil actions responsive to No. 15. (Leffler Aff. ¶10) Even though Lt. Moody made a copy of each civil complaint for Metro's counsel to produce in this action (Moody Dep. 51:24-52:17), a copy of the civil complaints was not produced to Plaintiffs so Plaintiffs might question Metro's PMK witnesses regarding the civil actions.

Lieutenant Moody did not review the Internal Affairs logs produced or attempt to identify responsive IAB files for purposes of production. (Moody Dep. 78:14-79:8) Deputy Chief Flynn admitted that pertinent investigation files could not be identified for production without a review of the complaint to determine if the allegations were relevant. (Flynn Dep. 66:16-67:7)

Consequently, Plaintiffs were unable to obtain material testimony binding upon Metro regarding Metro's investigations of alleged wrongful conduct committed by any law enforcement officer or an immediate family member of a law, which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and practice of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those policies..

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and/or their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O, P and EE; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)

**Category L (February 2002 Notice of 30(b)(6) Depos):** All notice of claims for damages of alleged wrongful conduct committed by any named Metro defendant or an immediate family member of a named Metro defendant and all notice of claims for damages against any Metro officer during the five years preceding and five years following the investigation of Erin DeLew's death.

**Category M (February 2002 Notice of 30(b)(6) Depos):** All civil lawsuits, actions, or complaints of alleged wrongful conduct committed by any named Metro defendant or an immediate family member of a named Metro defendant and all civil lawsuits, actions, or complaints against any Metro officer during the five years preceding and five years following the investigation of Erin DeLew's death.

Q. So you would have to review the brief of complaint to see if those allegations were made?

A. If you wanted me to look for every one of those, yes.

Q. For example here, on Flynn Exhibit 2, page 27805, on February 13, 1995, IAB number 950206, it states, CRS 510.2, Subsection G-1, conduct unbecoming an employee.

A. Correct.

Q. That would be difficult to know --

A. It is an extremely broad charge. It's based on a Civil Service rule. There is about that many things you can do for conduct unbecoming.

Q. So you would have to look at the complaint?

A. To know what exactly it is. It could be music too loud at a party that your neighbors are complaining about, all the way to a criminal act.

Flynn Dep. 66:16-67:7

Q. What specifically have you done in preparation for this deposition, though?

A. Other than reviewing the orders to produce documents, nothing.

Q. Do you have those orders with you?

A. I do not.

Q. Did you make any sort of checklist of things that the department has produced?

A. No, I did not.

Moody Dep. 6:18-7:1

Q. What's the process? What's the intake process for taking in and documenting and logging these various Notice of Claims?

A. Which category are you referring to? Do you want me to just go down the list?

Q. Sure.

A. Very formalized with -- number one, of course, when we receive a civil complaint, we're operating under a deadline. We immediately create a file. The hard file contains the complaint and a place for the investigative specialist managing that case file to make some notes. The first note is going to be that the complaint was forwarded to counsel for the Police Department in order that an answer could be prepared and response tendered within the deadline, within the time period. And that case file now is entered into our STAR system, which is an automated management system that we use to house that type of information.

Moody Dep. 40:8-41:1

Q. What information do your people put into the STAR system?

A. Depends on the type of complaint. Again, I am not an expert on the STAR system. I do not do data entry. But information, the nature of the complaint, the counsel for the department that will be handling the complaint, the name of the employee involved as a Defendant, the name of the Claimant, and reserve amounts, things like that, standardized reserve amounts that are going to be set aside to address the complaint.

Moody Dep. 42:18-43:3

Q. Then you mentioned that the nature of the complaint is categorized in the STAR system. How is that done?

A. Well, there are a number of different types of descriptions that can be assigned to a case. It's not terribly specific. But generally, we're talking about a wrongful death, for example, or some other Constitutional violation and it will go down as excessive force, wrongful death, false arrest, you know, things of that nature, illegal search.

Moody Dep. 48:17-49:1

Q. In the STAR system, if a claim has progressed to litigation to a civil action, is that information then input?

A. Yes, sir.

Q. What information is input relative to that?

A. I believe you asked that question early on and it's essentially that the Claimant, claim gives some details of the complaint, the Claimant information, the counsel representing the department.

Moody Dep. 50:6-14



Q. In each case file that has a Notice of Claim or a copy of the civil action complaint, did you make a copy of, in connection with the De Lew case, of the Notice of Claim or the civil action?

A. Yes. The initial complaint that was received?

Q. Yes.

A. Served on the department, yes.

Q. Did you make a copy of the Notice of Claim form?

A. Anything that was served formally on us, it would, relating to that, would be in the file.

Q. Did you give that information to Metro's counsel?

A. Absolutely.

Q. Did you provide the Notice of Claims and the complaint for actions that had been settled as well as those that were open during this time period?

A. Yes.

Q. Who determines the reserve amounts when these claims come in?

A. You know, the reserve list is a standardized list that, based on the category or whatever most closely reflects the nature of the complaint. The employee just refers to that list and the reserve amount is entered accordingly.

Q. Could you sort, from the STARS system, a list of those cases that had progressed to court actions or do you know, as you sit here?

A. I believe so.

Moody Dep. 51:24-53:3

Q. Did you produce any of the documents out of the claim file?

A. To my knowledge, we did not, other than the, perhaps the civil claim number. That's all public information and it's as easily acquired by the Plaintiffs in this case as it would be by us through the court.

Q. Did you prepare a privileged log of documents you were withholding?

A. I'm not sure that we did or not.

Moody Dep. 70:22-71:6

Q. No, it's a typewritten log. I could show you an example, but let me ask my question and maybe we don't need to. Do you know if anyone from Metro or anyone from your side of the case took those logs and asked to see the Internal Affairs Bureau file where the description of the claim wasn't necessarily clear enough to determine whether or not it fell within the request?

A. I don't -- I'm not sure I understand the question completely. But I don't think I know whether, who, if anyone, looked at each individual case file that was examined for purposes of production to you in this case.

Q. Did you review any of the Internal Affairs logs that were produced in this case?

A. No, I did not.

Q. Do you know who did at Metro?

A. The logs that were produced were produced by Commander Mike Alt and his staff in Internal Affairs directly to our attorneys.

Moody Dep. 78:14-79:8

Q. Looking at Exhibit Moody 2, you do know that the case files, for example, for the civil rights claims listed on, in the 1995 report, which is Bates labeled 28074 and 28075, that those case files have not been produced?

MR. ANGULO: You're talking about Moody Exhibit 2?

MR. RASTELLO: Yes.

THE WITNESS: That any case files that still exist pertaining to any of the Claimants named in that exhibit have been produced?

BY MR. RASTELLO:

Q. Yes.

A. To my knowledge, they have not been produced.

Moody Dep. 84:4-17



**CATEGORY O:**

All accident review board records and accident review board reports relating to the allegations of wrongful conduct committed by any named Metro Defendant and all accident review board records and accident review board reports relating to allegations against any Metro officer for false reporting, perjury, fraudulent investigation, false arrest, concealment, cover-up or conspiracy during the five years preceding and five years following the investigation of Erin DeLew's death.

**METRO'S RULE 30(b)(6) AND COURT ORDER VIOLATIONS:**

Metro's PMK witness, Theodore Moody, admitted that he did not review anything in preparation for this subject area. (Moody Dep. 6:18-7:1) Lieutenant Moody testified that the Accident Review Board reports were not produced. (Leffler Aff. ¶11; Moody Dep. 59:22-60:1, 80:1-13; 83:15-83:24, 96:18-97:)

Consequently, Plaintiffs were unable to obtain testimony binding upon Metro regarding Metro's Accident Review Board investigations, which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and practice of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those policies..

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and/or their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O, P and EE; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos.14, 15 17-21, 24-26 are identical.)

**Category O (February 2002 Notice of 30(b)(6) Depos):** All accident review board records and accident review board reports relating to allegations of wrongful conduct committed by any named Metro defendant or an immediate family member of a named Metro defendant and all accident review board records and accident review board reports relating to allegations against any Metro officer for false reporting, perjury, fraudulent investigation, false arrest, concealment, cover-up or conspiracy during the five years preceding and five years following the investigation of Erin DeLew's death.

Q. What specifically have you done in preparation for this deposition, though?

A. Other than reviewing the orders to produce documents, nothing.

Q. Do you have those orders with you?

A. I do not.

Q. Did you make any sort of checklist of things that the department has produced?

A. No, I did not.

Moody Dep. 6:18-7:1

Q. But, as far as you know, no Accident Review Board records were made by your people to be produced to Plaintiffs?

A. Correct, other than printouts I've already referred to.

Moody Dep. 59:22-60:1

Q. Lieutenant Moody, looking at Moody Exhibit 1, which is the ARB listing for 1993, other than similar listings for other years during the relevant time period, Metro hasn't produced the Accident Review Board records themselves to Plaintiffs; is that true?

A. I don't know. Individual files may have been produced at the request of Plaintiffs via our own counsel. If they were, my staff would have produced them.

Q. So you don't know, as you sit here?

A. I don't know which, if any, of those individual files would have been produced in their entirety if they still exist.

Moody Dep. 80:1-13

Q. Do you know whether or not the Accident Reports and the investigative reports that were associated with those accidents have been produced to the Plaintiffs?

A. Whether the Accident Reports associated with these event numbers -- no, I don't know.

Q. You don't know if they've been produced?

A. I'm not sure if the reports themselves have been pulled and turned over to you. No, I'm not sure they haven't or have been.

Moody Dep. 83:15-24

Q. For example, we know that the investigative files underlying the Notice of Claim case files have not been produced.

A. We would have to go back case-by-case, see which ones, see which files still exist and then answer that question case-by-case.

Q. But as of today, that hasn't been done?

A. Right.

Q. The same is true of the Accident Review Board records?

A. Right. We would have relied on our counsel to necessarily to identify specific files that would have needed to be produced as background information and as comprehensive lists and logs that we've produced for you in this case.

Moody Dep. 96:18-97:7



**CATEGORY P:**

All documents relating to Metro's Risk Management Office or Unit that mention allegations of wrongful conduct committed by any named Metro defendant or an immediate family member of a named Metro defendant and all documents relating to Metro's Risk Management Office or Unit that mention allegations against any Metro officer during the five years preceding and five years following the investigation of Erin DeLew's death.

**METRO'S RULE 30(b)(6) AND COURT ORDER VIOLATIONS:**

The Metro Defendants did not produce any documents from the Risk Manager's office as requested by Plaintiffs and ordered by the Court in its July 15, 2002 Order. (Leffler Aff. ¶12) (See Ex. 218, Metro Defendants' Sixth Supplemental Response to Second Requests served Aug. 9, 2002) Not a single claim file or investigative file from the Risk Manager's Office was produced, nor was a privilege log of withheld documents produced. (Moody Dep. 70:22-71:6, 84:4-17, 96:18-25).

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and/or their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O, P and EE; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)



**Category P (February 2002 Notice of 30(b)(6) Depos):** All documents relating to Metro's Risk Management Office or Unit that mention allegations of wrongful conduct committed by any named Metro defendant or an immediate family member of a named Metro defendant and all documents relating to Metro's Risk Management Office or Unit that mention allegations against any Metro officer during the five years preceding and five years following the investigation of Erin DeLew's death.

Q. What specifically have you done in preparation for this deposition, though?

A. Other than reviewing the orders to produce documents, nothing.

Q. Do you have those orders with you?

A. I do not.

Q. Did you make any sort of checklist of things that the department has produced?

A. No, I did not.

Moody Dep. 6:18-7:1

Q. Did you produce any of the documents out of the claim file?

A. To my knowledge, we did not, other than the, perhaps the civil claim number. That's all public information and it's as easily acquired by the Plaintiffs in this case as it would be by us through the court.

Q. Did you prepare a privileged log of documents you were withholding?

A. I'm not sure that we did or not.

Moody Dep. 70:22-71:6

Q. Looking at Exhibit Moody 2, you do know that the case files, for example, for the civil rights claims listed on, in the 1995 report, which is Bates labeled 28074 and 28075, that those case files have not been produced?

MR. ANGULO: You're talking about Moody Exhibit 2?

MR. RASTELLO: Yes.

THE WITNESS: That any case files that still exist pertaining to any of the Claimants named in that exhibit have been produced?

BY MR. RASTELLO:

Q. Yes.

A. To my knowledge, they have not been produced.

Moody Dep. 84:4-17

Q. For example, we know that the investigative files underlying the Notice of Claim case files have not been produced.

A. We would have to go back case-by-case, see which ones, see which files still exist and then answer that question case-by-case.

Q. But as of today, that hasn't been done?

A. Right.

Moody Dep. 96:18-25



**CATEGORY Q:**

Management audits relating to the evaluation or assessment, whether internal or external of Metro's investigation of police misconduct from 1990 to the present.

**METRO'S RULE 30(b)(6) AND COURT ORDER VIOLATIONS:**

Metro's PMK witness on Category Q, Deputy Chief Raymond Flynn, only reviewed two of the 12 Annual Bureau Inspections for Internal Affairs in preparation for his deposition. Flynn did not review the policy manual and therefore could not testify as to the frequency of for periodic audits or inspections of Internal Affairs. (Flynn Dep. 25:24-26:15, 31:15-18, 69:1-16) Flynn did not review the annual Quality Assurance audits. (Flynn Dep. 38:7-38:9) In preparation for his deposition, Flynn did not review the CALEA or accreditation portion of the annual inspection report of Internal Affairs from the 1990s. (Flynn Dep. 46:18-47:5; 62:13-63:9)

Consequently, Plaintiffs were unable to obtain material testimony binding upon Metro regarding any audits or evaluation of Metro's investigation of police misconduct, which was needed to establish Plaintiffs' theory that Metro has a customs and practices of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those policies..

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and/or their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O, P and EE; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos.14, 15 17-21, 24-26 are identical.)

**Category Q (February 2002 Notice of 30(b)(6) Depos):** Management audits relating to the evaluation or assessment, whether internal or external, of Metro's investigation of police misconduct from 1990 to the present.

Q. Were you able to review the Annual Bureau Inspections for Internal Affairs from 1990 to the present?

A. I know I looked at two of them.

Q. Okay. But there would have been maybe 10 or 11?

A. If they did what they were supposed to do, there would have been one done every year.

Q. Did you make an inquiry as to whether or not one was done each year?

A. No, sir.

Q. Do you have a belief as to whether or not one was done each year?

A. I would believe that the Annual Bureau Inspection done by the Bureau Commander would have been done every year, especially coming from Internal Affairs.

Flynn Dep. 25:24-26:15

Q. But other than those three documents, did you go back and review any of the other annual Internal Affairs Annual Bureau Inspection reports?

A. Not in preparation for today.

Flynn Dep. 31:15-18

Q. In preparation of today's deposition, those annual inspections reports were not given to you?

A. Correct.

Flynn Dep. 38:7-38:9

Q. Do they look at the Internal Affairs Bureau?

A. Yes, I know they have.

Q. How do you know that?

A. Internal investigations is an important part of the accreditation process. It leads towards the credibility of an organization.

Q. Do you recall generally what the recommendations were in the last --

A. No, sir, I would have to refer back to the executive summary.

Q. In preparation for today's deposition, you didn't do that?

A. I didn't know it would come up.

Flynn Dep. 46:18-47:5

Q. Okay. There was no Quality Assurance Bureau report produced between 1992 and the October 2000 broader one?

A. I don't know.

Q. Do you know if they exist?

A. I don't know. I could call QAB and get you an answer, but they would be the only ones that could tell you.

Q. So these three documents were provided to you by Metro's counsel?

A. The ones that I reviewed, yes, sir.

Q. But in addition to these reports, there are also the annual inspection reports done by the Internal Affairs Bureau Commander each year?

A. Yes. This report here easily would be more objective because it's being done by an outside unit.

Q. In preparation for today's deposition, you didn't have the opportunity to review the CALEA or accreditation portion of the report dealing with Internal Affairs during the 1990s?

A. I didn't expect it to come up, so the answer is no.

Flynn Dep. 62:13-63:9

Q. Deputy Chief, how often do you believe that these Quality Assurance, QAB, or Professional Standards audits were done of Internal Affairs? How frequently?

A. I don't know.

MR. ANGULO: Objection. Asked and answered.

BY MR. RASTELLO:

Q. Let's see -- Category Q, which you were designated as the person most knowledgeable states that, "Management audits relating to the evaluation or assessment, whether internal or external, of Metro's investigation of police misconduct from 1990 to the present." Well, I guess it's rhetorical. You just don't know how frequently the QAB audits were done of Internal Affairs during the 1990s?

A. Correct.

Flynn Dep. 69:1-16



**Categories T and U:**

T. The radio channel and other contact with Metro officers on September 27, 1994, including the tape or log of all such contact and including, but not limited to, the interpretation of the LVMPD Communication Center Event Search (attached as Exhibit A).

U. The LVMPD Audio Tape of the September 27, 1994 dispatch.

**METRO'S RULE 30(b)(6) AND COURT ORDER VIOLATIONS:**

Metro's PMK witness on Categories T and U, Sharon Counterman, Operations Director for Metro Communications Bureau, could not answer whether the original or backup copy of the magnetic tape recordings made on the evening of Erin DeLew's death still exists or what even happened to the tapes. (Counterman Dep. 173:13 – 174:9) Ms. Counterman did not inspect the vaults where the tapes are kept to determine whether it still exists. Ms. Counterman did not make any inquiries regarding the whereabouts of any inventory, list or log books of preserved tapes. (Counterman Dep. 65:14-17, 66:11-13, 70:18-22, 77:19-78:13, 79:18-80:1, 91:15-91:18)

Ms. Counterman could not testify regarding who made the incomplete cassette audio tape produced in the case relating to the Erin DeLew fatality, how the tape was made, or when the tape was made. Ms. Counterman did not even make the most basic inquiries to discover this information prior to her deposition. (Counterman Dep. 71:13-23, 87:18-88:4, 160:15-20, 161:5-15, 166:8-14, 172:21-25, 173:2-12)

Ms. Counterman also could not answer any questions regarding Metro's pager system and whether or not the MDT text messages were stored electronically anywhere. (Counterman Dep. 42:8-13, 47:2-47:6, 48:13-16).

Ms. Counterman could not identify the crime scene supervisor or traffic sergeant dispatched to the Erin DeLew fatality from the Incident Recall documents. Nor could Ms. Counterman identify which Metro officers drove Janet Wagner home during the investigation. (Counterman Dep. 111:11-14, 114:20-23, 133:21-25, 141:2-9, 146:19-24, 206:22-207:3)

Consequently, Plaintiffs were unable to obtain material testimony binding upon Metro regarding the communications made on the evening of Erin DeLew's death, which were needed to establish Metro's knowledge of Mrs. Wagner's intoxication, the purposeful delay in investigating and calling NHP, the facts surrounding escorting Mrs. Wagner to her home during the middle of the investigation (including the escorting officers' identities), the favorable treatment accorded Mrs. Wagner, and the early knowledge of high level Metro supervisors, including some of the Metro Defendants, regarding the felony DUI/vehicular homicide of Erin DeLew.



**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery request was calculated to establish Metro's knowledge of Janet Wagner's intoxication, the purposeful delay in investigating and calling NHP, the facts surrounding escorting Mrs. Wagner to her home during the middle of the investigation (including the escorting officers' identities), and the favorable treatment accorded Mrs. Wagner, and given the destruction of this evidence after it was subpoenaed in the state wrongful death case:

Deem it established that Metro officers knew of Janet Wagner's intoxication, purposefully delayed investigating the fatality and calling NHP, escorted Janet Wagner to and from the scene to her home during the investigation, and accorded her special treatment and/or preclude Metro from introducing at trial evidence opposing Plaintiffs' assertion of the above-stated facts.

(Sanction Requests for PMK categories T, U, CC and 1<sup>st</sup> Req/No. 1 are virtually identical.)

**Category T (February 2002 Notice of 30(b)(6) Depos):** The radio channel and other contact with Metro officers on September 27, 1994, including the tape or log of all such contact and including, but not limited to, the interpretation of the LVMPD Communication Center Event Search (attached as Exhibit A).

**Category U (February 2002 Notice of 30(b)(6) Depos):** The LVMPD Audio Tape of the September 27, 1994 dispatch.

Q. Do you know if any record of that communication is made at all, even the fact that a communication was made?

A. Again, you'll have to ask I.T. I don't know.

Q. You just don't know the answer to that?

A. No.

Counterman Dep. 42:8-13

Q. Who would know whether or not those text messages that was sent using our pager system were electronically stored?

A. At the present time, I don't know who would know.

Counterman Dep. 47:2-6

Q. As you sit here today, you don't know whether or not the text messages that were sent using Metro's pager system were electronically stored anywhere?

A. No, I do not know.

Counterman Dep. 48:13-16

Q. When a tape was returned from the hold cabinet or released from the hold cabinet, would a notation be made in the log?

A. Yes.

Q. Was an electronic recording made of that log at all?

A. No.

Q. How about a microfilm?

A. No.

Q. How about any sort of copy?

A. No.

Q. Was it a bound logbook?

A. It was just in a binder and that's all it was, was just a clip binder. That was it.

Q. A clip binder.

A. I don't remember in '94 if it was a -- I'm thinking what they're called.

MR. ANGULO: You mean a three-ring binder?

THE WITNESS: -- three-ring binder, or if it was just a binder with a top and a bottom that had the little silver clips in it.

BY MR. RASTELLO:

Q. Were you ever asked to look for a copy of that log as it pertains to this case?

A. Not that I recall.

Counterman Dep. 65:14-66:13

Q. Was there more than one Research Assistant who listened to tapes in 1994?

A. Not to my knowledge. There was only one.

Q. What was his or her name?

A. I don't recall who it was in '94. I'm sorry.

Counterman Dep. 70:18-22

Q. But there was only one Research Assistant?

A. Yes.

Q. He or she probably worked the day shift?

A. More than likely, yes, because that's when all the offices were open.

Q. So you would not know the name of the Research Assistant who generated the tape that has been produced in this case relating to the Erin DeLew fatality?

A. No, I didn't bother to go and look. I don't have it.

Counterman Dep. 71:13-23

Q. What happened to these logs that were maintained of tapes placed on hold? Where are they stored now?

A. I don't believe we have any. You know, I didn't go looking through anything. I don't believe we have any current logs. Tapes that are held now are old tapes from old cases and I would have to talk to the Research Assistant and see if she has anything, any type of log.

Q. So you still have some magnetic tapes that are on hold from periods prior to August of 2000?

A. Yes.

Q. Are they in a cabinet?

A. Yes.

Q. Is there a log that is related to those tapes?

A. I believe -- this is what I believe, I haven't looked -- probably each tape would have a case number put on the front [sic] of it on a piece of paper. I don't know if there is a log any longer.

Counterman Dep. 77:19-78:13

Q. If these logs still existed, where likely would they be stored at Metro?

MR. ANGULO: Objection. Calls for speculation.

THE WITNESS: The speculation would be the storage room where the tapes are.

BY MR. RASTELLO:

Q. You haven't checked?

A. I have not personally gone and looked, no.

Counterman Dep.79:18-80:1

Q. Do you know who prepared the cassette tape in this case?

A. I would have to see your cassette tape. I don't know.

Q. Do you know when it was prepared?

A. No.

Q. But you've listened to it?

A. I've listened to a copy Peter gave me. I have listened to that, yes.

Q. Do you know who prepared that tape?

A. No, because my copy didn't have a label on it. So I would have to see the copy.

Counterman Dep.87:18-88:4

Q. Is there an inventory or list of the tapes that are currently on hold?

A. I don't know if there is a list. I would have to go and look.

Counterman Dep. 91:15-18

Q. Finally, going back to Exhibit 1, there is a handwritten note at the entry at 19:23 that says, "no air traffic." Do you know what that might mean?

A. No, I don't even know who wrote that.

Counterman Dep. 111:11-14

Q. So you don't know who the crime scene supervisor who was dispatched to this Erin DeLew fatality?

A. No.

Counterman Dep. 114:20-23

Q. Okay. Who was the crime scene supervisor who arrived at the scene at 7:38 p.m.?

A. It doesn't show on any of these printouts here. You'll have to have a different format to show a P number.

Counterman Dep. 133:21-25

Q. . . . First of all, what does "523T" stand for?

A. That's a Traffic Sergeant.

Q. Which Traffic Sergeant is this?

A. Let's see if I have it in the notes I brought with me. I don't have it in my notes, but you would have it in probably some of the other paper printouts you have.  
Counterman Dep. 141:2-9

Q. Do you see anything in this Incident Recall that would indicate that Metro officers drove Officer Wagner's wife to her residence?  
MR. ANGULO: Objection. Asked and answered twice already.

THE WITNESS: No.  
Counterman Dep. 146:19-24

Q. You're the Communications Director of Metro?  
A. That's correct.  
Q. Correct. And you could not find a copy of any tape that was made in this case in the records at the Communications Bureau at Metro?  
A. That's correct.  
Counterman Dep. 160:15-20

Q. Do you know when that tape was made?  
A. No.  
MR. ANGULO: Objection. Asked and answered.  
BY MR. RASTELLO:  
Q. Do you know how that tape was made?  
A. The way we make all tapes -- off of the original recording, the magnetic tape.  
Counterman Dep. 161:5-15

Q. Did you contact any of these individuals in the last couple weeks regarding this case?  
A. No.  
Q. The Research Assistants, there is only one Research Assistant at any one time in the Communications Bureau; is that correct?  
A. There was, yes.  
Counterman Dep. 166:8-14

Q. That's not my question. My question is: Do you know for a fact what documents, if any, the Research Assistant who made the tape in this case used?  
MR. ANGULO: Objection. Asked and answered.  
THE WITNESS: No.  
Counterman Dep. 172:21-25

Q. Okay. Do you know approximately -- I think I asked you this -- you don't know approximately when this cassette tape was made?

MR. ANGULO: Objection. Asked and answered.

THE WITNESS: No.

BY MR. RASTELLO:

Q. You weren't able to locate any file at Metro that would indicate who made the tape, when it was made, what reports they had available to them to help them make the tape?

A. No.

Counterman Dep. 173:2-12

Q. What happened to the two magnetic tapes, the primary and backup tapes, for September 27, 1994?

A. I have no knowledge of what happened to them back then.

Q. Did you make any inquiries?

A. I looked to see if we had anything. We didn't have anything.

Q. Where did you look?

A. In our storage room where we've got our copies of stuff.

Q. Did you look in the hold vault?

A. No. And that's something that I haven't done. I looked for our copy because I thought we were making cassette copies back then.

Q. So, as you sit here today, you have not looked into the cabinet where the magnetic tapes are put on hold to see if either the primary or backup magnetic tape of September 27, 1994, still exists?

A. No. We wouldn't have a backup. If we had anything, it would be a primary if it even exists. No, and I did not ask -- we didn't go through all that. I was just looking for this copy for this deposition.

Counterman Dep. 173:13-174:9

Q. Do you know whether Officer Rooney or Sergeant Ojeda drove Janet Wagner home that evening?

A. No.

Q. Did you make any inquiries of them?

A. No.

Q. Or of any of these officers regarding --

A. No.

Counterman Dep. 206:22-207:3



**Category CC:**

All cellular telephone records from September 27, 1994 to September 30, 1994 for all named Metro Defendants and all Metro personnel involved in any aspect of the DeLew fatal traffic collision investigation.

**METRO'S RULE 30(b)(6) AND COURT ORDER VIOLATIONS:**

Deputy Chief Richard McKee, Metro's PMK witness for Category CC, was unprepared to answer questions regarding the cellular telephone calls made by Defendants on the evening of September 27, 1994 including answers to the most basic questions regarding the identity of numbers and names on the cellular bills. He did not bother to make the most basic inquiries to discover the information. (McKee Dep. 46:15-22, 47:10-24, 48:20-49:14, 50:2-9, 51:1-25, 53:10-54:7, 55:24-57:3, 62:10-23)

Consequently, Plaintiffs were unable to obtain material testimony binding upon Metro regarding the communications made on the evening of Erin DeLew's death, which were needed to establish Metro's knowledge of Mrs. Wagner's intoxication, the purposeful delay in investigating and calling NHP, the facts surrounding escorting Mrs. Wagner to her home during the middle of the investigation (including the officers' identities), the favorable treatment accorded Mrs. Wagner, and the knowledge of high level Metro supervisors regarding the fatal incident.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery request was calculated to establish Metro's knowledge of Janet Wagner's intoxication, the purposeful delay in investigating and calling NHP, the facts surrounding escorting Mrs. Wagner to her home during the middle of the investigation (including the escorting officers' identities), and the favorable treatment accorded Mrs. Wagner:

Deem it established that Metro officers knew of Janet Wagner's intoxication, purposefully delayed investigating the fatality and calling NHP, escorted Janet Wagner to and from the scene to her home during the investigation, and accorded her special treatment and/or preclude Metro from introducing at trial evidence opposing Plaintiffs' assertion of the above-stated facts.

(Sanction Requests for PMK categories T, U, CC and 1<sup>st</sup> Req/No. 1 are virtually identical.)



**Category CC (February 2002 Notice of 30(b)(6) Depos):** All cellular telephone records from September 27, 1994 to September 30, 1994 for all named Metro Defendants and all Metro personnel involved in any aspect of the DeLew fatal traffic collision investigation.

Q. Let me hand you what's been marked as McKee Exhibit 1 and ask you if you can identify it, please.

MR. ANGULO: That's for you. Go ahead and look.

A. It's a cellular telephone bill. I mean, there's a couple here. It's three cellular telephone bills and a telephone list.  
McKee Dep. 46:15-22

Q. Okay. And on the first page there's a note to Bob from Kathie.

A. Uh-huh.

Q. Who is Bob? Do you know who Bob is?

A. No, I don't know.

Q. Okay. And do you know who Kathie is?

A. No, I do not.

Q. And there's a reference to three telephone numbers. Do you know whose numbers those are?

A. No, I do not.

McKee Dep. 47:10-24

A. Well as you said, it appears to be a cellular telephone bill from Sprint Cellular.

Q. Okay. And there's an account number of LV09297.

A. Uh-huh.

Q. Do you know what that stands for?

A. No, I do not.

Q. Okay. And it says "CHARGES FOR MOBILE 702-275-4345." Do you know what that refers to?

A. Well I would assume it's saying that this bill is for that cellular telephone.

Q. And do you know whose cellular telephone that is?

A. No, sir.

Q. Okay. Do you know how it came to be that your counsel came into possession of this Exhibit 1?

A. No, sir.

Q. Okay. So you don't know its origin, I take it?

A. No, sir.

McKee Dep. 48:20-49:14

Q. Okay. All right. Incidentally, did you attempt to contact Sprint Cellular and ask them if they might have any microfiche or electronic data records of this bill?

A. No, I did not. I know, as an example, that this was called 360 Cellular at that time and they're not even in business anymore. Sprint sold them.

McKee Dep. 50:2-9

Q. Okay. Did you call Verizon and ask them if they had any electronic data of these mobile cell phone calls made in September of 1994?

A. No, sir.

Q. Okay. Do you know whose handwriting that is on page three of five of McKee Exhibit 1 where it states "Bill Johnson"?

A. No, sir.

Q. Okay. Did you attempt to determine whose handwriting that is?

A. No, sir.

Q. Okay. All right. And then down below on page three there calls 8 through 16 are listed. Do you see that?

A. Uh-huh. Yes, sir.

Q. It's impossible to tell -- from this page three, it's impossible to tell what calls Bill Johnson may have made before 7:30 p.m. -- 7:34 p.m. on September 27th, 1994. Would you agree with that?

A. Yes.

Q. Okay. And it's not possible to tell what telephone calls Bill Johnson may have made after 11:03 p.m. on September 27th, 1994. Would you agree with that?

A. Well from this piece of paper, yes.

McKee Dep. 51:1-25

Q. Okay. Did you make any inquiry to find out if there were seven calls that were redacted?

A. No, sir.

Q. Okay. Similarly, did you make any inquiries to determine whether or not there were any calls after call number 16?

A. No, sir.

Q. Okay. Do you know whether or not Bill Johnson was assigned the cell phone number 702-379-9392?

A. No, sir.

Q. Do you recognize, do you know any of the telephone calls that were made or received from numbers 8 through 16 on page three of McKee Exhibit 1?

A. The only thing I would be able to say, that the 229, the very first number, 3810, that's dispatch.

Q. Okay.

A. But other than that, I have no idea.

Q. Okay. Did you make any inquiry of Bill Johnson to ask him?

A. No.

McKee Dep. 53:10-54:7

Q. All right. On page four of McKee Exhibit 1, do you know whether or not Rick Hart was assigned the telephone number 702-373-0575?

A. No, I do not.

Q. Do you know whose handwriting that is that indicates "Rick Hart"?

A. No, I do not.

Q. And I take it your questions would be the same, that you don't know the origin of this particular document and/or who may have made any markings or redactions on this document; is that fair?

A. Yes, sir, it is.

Q. In other words, you don't know? I'm sorry, just to make it --

A. Yeah, I do not know.

Q. Okay. So for example, we cannot tell whether or not Rick Hart made any telephone calls on his cell phone after 11:03 p.m. on September 27th; is that true?

A. Correct.

Q. Okay.

A. By this sheet of paper, no.

Q. Okay. Okay. Let's go to page five of McKee Exhibit 1. Do you have an understanding as to what page five purports to be?

A. Only that it's labeled "TELEPHONE LIST."

Q. Okay. And do you know the origin of this document?

A. No, I do not.

McKee Dep. 55:24-57:3

Q. Okay. Now it appears that Lieutenant Thornton had a cell phone based upon page five of McKee Exhibit 1. Would you agree with that?

A. Yes.

Q. Okay. And someone has handwritten a date up in the left-hand corner 9/27/94. Do you know who wrote that?

A. No, I do not.

Q. Okay. Would that indicate that this was the telephone list as of September 27, 1994?

A. I have no knowledge.

Q. Okay. Do you know who generated this telephone list?

A. No, I do not.

McKee Dep. 62:10-23



**Category EE:**

All 911 calls placed from Jerry Keller's home from 1990 to the present and any subsequent handling of the records or documents concerning the calls.

**METRO'S RULE 30(b)(6) AND COURT ORDER VIOLATIONS:**

Metro's PMK witness for Category EE, Richard McKee, did not know whether any reports were prepared relating to this 911 call from Sheriff Keller's home (even though Sheriff Keller testified that he has prepared a report) and did not do a search in the records section to see if any reports existed. (Rastello Aff. ¶14; McKee Dep. 131:7-9, 134:19-137:2) McKee was instructed not to answer any questions on the briefing at Metro regarding the 911 call from Sheriff Keller's house. (Rastello Aff. ¶14; McKee Dep. 100:25-102:18) McKee did not inquire of any of the people who were responsible for handling the evidence to see if any shell casings or bullets were preserved. (McKee Dep. 105:19-106:1) McKee made no effort to check to see if any evidence was booked relating to the event. McKee did not inquire regarding the identity of the persons responding to the 911 call from Sheriff Keller's residence, and he made no inquiry of the dispatcher who took the 911 call from Sheriff Keller's residence. (Rastello Aff. ¶14; McKee Dep. 105:19-106:1, 115:12-15, 117:11-18, 125:6-13, 131:7-9, 135:4-11, 136:8-10, 136:16-18, 136:24-137:2)

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and/or their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O, P and EE; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical)

**Category EE (February 2002 Notice of 30(b)(6) Depos):** All 911 calls placed from Jerry Keller's home from 1990 to the present and any subsequent handling of the records or documents concerning the calls.

Q. Prior to being asked to prepare Exhibit 6, had you heard about --

A. This call?

Q. Yeah, this call.

A. Yes.

Q. Okay. How had you heard that?

A. From Sheriff Keller.

Q. Okay. When?

A. Probably -- well he wasn't sheriff at the time. He was the deputy chief of human resources or whatever it was called then, administrative services. I'm sorry. He was. This was when he was sheriff. Probably from early-morning briefing. We brief with the sheriff every day.

Q. Okay. And what do you recall about that briefing?

MR. ANGULO: I'm going to instruct him not to answer that question. As you recall, when the sheriff's deposition was taken, it was done with a court order about what could be discussed about the 911 call, and while we allowed you to discuss the details of it, that was done in a sealed section. I think the same concerns apply here.

MR. RASTELLO: Okay. So are you going to instruct him not to answer?

MR. ANGULO: I'm going to instruct him not to answer that question.

MR. RASTELLO: Okay.

BY MR. RASTELLO:

Q. I'm going to ask you a series of questions about that, and I suspect Metro's counsel will instruct you not to answer. I'm not asking them to be difficult. I'm asking them --

A. I understand.

Q. -- to make a record.

A. I understand.

MR. RASTELLO: Okay. What was my last question?

(Record read by the court reporter.)

BY MR. RASTELLO:

Q. Are you going to follow Metro's counsel's instruction not to answer?

A. Absolutely.

McKee Dep. 100:25-102:18

Q. Okay. Did you inquire as to whether or not Sheriff Keller recovered any bullets?

A. Did I?

Q. Yes.

A. No, sir.

Q. Do you know whether or not he recovered any bullets?

A. No, sir.

McKee Dep. 105:19-106:1

Q. ...So as you sit here today, you don't know the identities of the persons responding to this 911 call from Sheriff Keller's residence?

A. No, sir, I do not.

McKee Dep. 115:12-15

Q. Okay. Does this report indicate the identity of the dispatcher taking the call from Charlotte Keller?

A. No, it does not.

Q. Okay. Does it indicate --

A. Well, I'm trying to -- you know, I shouldn't say that. These -- 4258, 4258 could very well be who is taking the calls.

Q. You just don't know?

Q. And as you sit here today, you don't know the identity of those --

A. No.

Q. -- of those dispatchers or the persons taking the call from Charlotte Keller?

A. Correct.

Q. Okay. Did you make any inquiry?

A. Nope. No, sir.

McKee Dep. 117:11-18

Q. Okay. And again, we don't know the identities?

A. Well we do by P number of the primary unit, and we could very easily say, "Who was in 1 Robert 1 on March 16th of 1997 at 4:30 in the morning?"

Q. But you don't know that today?

A. No, I do not.

McKee Dep. 125:6-13

Did you do a search of this event number to see if there were any documents related to it?

A. No, I did not. I was not asked to.

McKee Dep. 131:7-9

Q. I just want to confirm that you don't know whether or not any reports were prepared relating to this 911 call from Sheriff Keller's home.

A. No, sir. What the CAD printout would indicate is by clearing it with H, Henry, there are other dispositions, as you can see, if reports are generated that it would have been cleared with, but from the CAD printout I would say, to my knowledge, there were no reports generated.

Q. Okay. But you didn't do a search of that event in the records section?

A. No, I did not.

Q. Okay. And did you do -- did you make an inquiry of any of the people who are responsible for handling the evidence to see if any shell casings or bullets were preserved?

A. No, I did not.

Q. Okay. Did you speak with -- is it Sheriff Good or Deputy Sheriff Good or Edwin --

MR. ANGULO: Do you mean Undersheriff Winget? Who are you asking about?

MR. RASTELLO: Well let me ask. He already told me.

BY MR. RASTELLO:

Q. You didn't speak with Deputy Sheriff Winget regarding --

A. Undersheriff Winget, no, I did not.

Q. The deputy sheriff responsible for that area --

A. Which area?

Q. Where Sheriff Keller's home is located.

A. The area captain?

Q. The area captain, yeah.

A. No, I did not.

Q. Okay.

A. As you recall, I couldn't remember who the captain of that area command is.

Q. That's right. I had it right here. Did you ask Sheriff Keller if he prepared any reports?

A. No, I did not.

Q. Deputy Chief Karl Edwards, did you speak with him?

A. It's Kyle.

Q. Kyle Edwards?

A. Kyle Edwards, and no, he's retired.

Q. Okay. Did you check to see if any evidence was booked relating to this event?

A. I did not.

MR. ANGULO: Objection, asked and answered.

BY MR. RASTELLO:

Q. Okay. Do you know Richard Good?

A. I -- I know him. He's retired.

Q. Okay. Did you check with the -- is it Criminalistics Bureau to see if they had any evidence relating to this event?

A. No, I did not.





**1ST REQUEST NO. 1:**

All documents relating to ... Defendants' actions (or lack of action) pertaining to the investigation or circumstances surrounding the death of Erin DeLew.

**METRO DEFENDANTS' VIOLATIONS OF COURT'S ORDER:**

Metro never produced either the original or back-up copy of the Sept. 27, 1994 magnetic tape recordings of the radio and telephone channels. (Leffler Aff. ¶3) In fact, Metro's Rule 30(b)(6) witness did not even inspect the vault containing the tapes to see if they still existed. (Counterman Dep. 77:19-78:2, 79:18-80:1, 173:13-174:9.)

Plaintiffs subpoenaed these tapes on November 10, 1994 in the state wrongful death suit, *DeLew v. Wagner*, when the original magnetic tape and back-up magnetic tape were still in existence. (Leffler Aff. ¶3) Metro produced a cassette tape containing some self-selected communications made on September 27, 1994. (Leffler Aff. ¶3) None of the communications contained on the cassette tape indicate the time the communication was made or the channel from which such communication was made. (Leffler Aff. ¶3)

Consequently, Plaintiffs were deprived material evidence regarding the communications made on the evening of Erin DeLew's death, which were needed to establish the Metro Defendants' knowledge of Mrs. Wagner's intoxication, the purposeful delay in investigating and calling NHP, the facts surrounding escorting Mrs. Wagner to her home during the middle of the investigation (including the escorting officers' identities), the favorable treatment accorded Mrs. Wagner, and the early knowledge of high level Metro supervisors, including some of the Metro Defendants, regarding the felony DUI/vehicular homicide of Erin DeLew.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because discovery of the tape recorded communications was calculated to establish Metro's knowledge of Janet Wagner's intoxication, the purposeful delay in investigating and calling NHP, the facts surrounding escorting Mrs. Wagner to her home during the middle of the investigation (including the escorting officers' identities), and the favorable treatment accorded Mrs. Wagner, and given the destruction of this evidence after it was subpoenaed in the state wrongful death case:

Deem it established that the Metro Defendants knew of Janet Wagner's intoxication, purposefully delayed investigating the fatality and calling NHP, escorted Janet Wagner to and from the scene to her home during the investigation, and accorded her special treatment and/or preclude the Metro

Defendants from introducing at trial evidence opposing Plaintiffs' assertion of the above-stated facts.

(Sanction Requests for PMK categories T, U, CC and 1<sup>st</sup> Req/No. 1 are virtually identical.)

**1ST REQUEST NO. 1:** All documents relating to any critique, review, examination, or investigation of Defendants' actions (or lack of action) pertaining to the investigation or circumstances surrounding the death of Erin DeLew.

Q. What happened to these logs that were maintained of tapes placed on hold? Where are they stored now?

A. I don't believe we have any. You know, I didn't go looking through anything. I don't believe we have any current logs. Tapes that are held now are old tapes from old cases and I would have to talk to the Research Assistant and see if she has anything, any type of log.

Counterman Dep. 77:19-78:2

Q. Were you ever asked to look for a copy of that log as it pertains to this case?

A. Not that I recall.

Counterman Dep. 66:11-13

Q. If these logs still existed, where likely would they be stored at Metro?

MR. ANGULO: Objection. Calls for speculation.

THE WITNESS: The speculation would be the storage room where the tapes are.

BY MR. RASTELLO:

Q. You haven't checked?

A. I have not personally gone and looked, no.

Counterman Dep. 79:18-80:1

Q. What happened to the two magnetic tapes, the primary and backup tapes, for September 27, 1994?

A. I have no knowledge of what happened to them back then.

Q. Did you make any inquiries?

A. I looked to see if we had anything. We didn't have anything.

Q. Where did you look?

A. In our storage room where we've got our copies of stuff.

Q. Did you look in the hold vault?

A. No. And that's something that I haven't done. I looked for our copy because I thought we were making cassette copies back then.

Q. So, as you sit here today, you have not looked into the cabinet where the magnetic tapes are put on hold to see if either the primary or backup magnetic tape of September 27, 1994, still exists?

A. No. We wouldn't have a backup. If we had anything, it would be a primary if it even exists. No, and I did not ask -- we didn't go through all that. I was just looking for this copy for this deposition.

Counterman Dep. 173:13-174:9



**1ST REQUEST NO. 3:**

All reports, memoranda, summaries or other documents relating to the investigation by METRO and NHP of alleged wrongful conduct committed by any law enforcement officer or an immediate family member of a law enforcement officer during the five years preceding and five years following the investigation of Erin DeLew's death.

**Revised per Court Order dated 8/15/01:** Documents relating to the investigation ... of alleged wrongful conduct committed by any named Metro Defendant or an immediate family member or any documents relating to the investigation ... for false reporting, perjury, fraudulent investigation, false arrest, concealment, cover-up or conspiracy. Documents relating to the investigation ... of alleged wrongful conduct committed by any named Metro Defendant or an immediate family member or any documents relating to the investigation ... for false reporting, perjury, fraudulent investigation, false arrest, concealment, cover-up or conspiracy.

**METRO DEFENDANTS' VIOLATIONS OF COURT'S ORDER:**

Metro did not produce a single responsive document prior to August 9, 2002. (See Ex. 218, Metro Defendants' Sixth Supplemental Response to Second Requests served Aug. 9, 2002) Rather, on July 24, 2002, Metro served by mail the cryptic and uninformative IAB logs and advised Plaintiffs to review the logs and identify responsive documents, even though it is not possible to do so given the nature of the cryptic logs. (Rastello Aff. ¶¶10-11; Flynn Dep. 66:16-67:11, Moody Dep. 78:16-79:1) Metro did not review any of its IAB files to identify responsive documents. (Moody Dep. 78:16-79:1) Metro did not begin producing responsive documents until August 27, 2002, well after the August 9, 2002 deadline and after most of the PMK depositions had been taken. ((Rastello Aff. ¶13; Leffler Aff. ¶4)

Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed any law enforcement officers or immediate family members of same, which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of

citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)

**1ST REQUEST NO. 3:** All reports, memoranda, summaries or other documents relating to the investigation by METRO and NHP of alleged wrongful conduct committed by any law enforcement officer or an immediate family member of a law enforcement officer during the five years preceding and five years following the investigation of Erin DeLew's death.

Revised 8/15/01: Documents relating to the investigation by Metro and NHP of alleged wrongful conduct committed by any named Metro Defendant or an immediate family member of a named Metro Defendant, or any documents relating to the investigation by Metro or NHP of any Metro trooper for false reporting, perjury, fraudulent investigation, false arrest, concealment, cover-up or conspiracy.  
(Revision offered by letter dated 2/23/01.)

Q. So you would have to review the brief of complaint to see if those allegations were made?

A. If you wanted me to look for every one of those, yes.

Q. For example here, on Flynn Exhibit 2, page 27805, on February 13, 1995, IAB number 950206, it states, CRS 510.2, Subsection G-1, conduct unbecoming an employee.

A. Correct.

Q. That would be difficult to know --

A. It is an extremely broad charge. It's based on a Civil Service rule. There is about that many things you can do for conduct unbecoming.

Q. So you would have to look at the complaint?

A. To know what exactly it is. It could be music too loud at a party that your neighbors are complaining about, all the way to a criminal act.

Q. How about this one, 950209, standards of conduct, criminal laws. Can you tell whether that would fall within one of the categories of letter C?

A. I cannot.

Flynn Dep. 66:16-67:11

Q. ...Do you know if anyone from Metro or anyone from your side of the case took those logs and asked to see the Internal Affairs Bureau file where the description of the claim wasn't necessarily clear enough to determine whether or not it fell within the request?

A. I don't -- I'm not sure I understand the question completely. But I don't think I know whether, who, if anyone, looked at each individual case file that was examined for purposes of production to you in this case.

Moody Dep. 78:16-79:1





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**1ST REQUEST NO. 4:**

All fatal traffic collision reports investigated by Metro during the five years proceeding and five years following the preparation of the traffic collision report pertaining to Erin DeLew's death.

**Revised Per Court Order dated 8/15/01:** to: All fatal traffic collision reports investigated by Metro during the years 1996 and 1997.]

**METRO DEFENDANTS' VIOLATIONS OF COURT'S ORDER:**

Metro represented that it destroys traffic collision reports after five years and therefore could not produce reports during the most relevant years i.e. 1989 to 1995. (Rastello Aff. ¶3) Based on this representation, Plaintiffs and the Court narrowed the document request to the years 1996 and 1997. (Rastello Aff. ¶3) Plaintiffs learned during the Rule 30(b)(6) depositions that Metro's representation was false and that Metro retains Traffic Accident Reports permanently. (Lang Dep. 20:19-21:2; Ex. 204; Redfairn Dep. 16:22-17:5) However, Metro never did produce the pre-1995 reports. (Rastello Aff. ¶4)

In addition, during the June 13, 2002 hearing, the Magistrate Judge ordered Metro to produce unredacted copies of the Traffic Accident Reports it had produced for the narrowed time period. (Ex. 210, Hearing Trans. 30:5-23, June 13, 2002 (#190)) However, Metro never did so. (Leffler Aff. ¶5)

Metro employees 200 people in its Records Bureau and that it had ample resources (both human and computer) to identify and produce responsive documents. (Lang Dep. 22:23-23:11, 41:9-23, 43:17-20)

Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' standard operating procedures in the investigation of fatal traffic collisions, which was needed to show the Metro Defendants' departure from such standard operating procedures and the special treatment the Metro Defendants accorded Mrs. Wagner during the investigation of the vehicular homicide of Erin DeLew.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was calculated to establish Metro's standard operating procedures for the investigation of fatal traffic collisions as of September 1994 and that the Metro Defendants departed from those procedures and accorded Janet Wagner special treatment:

Deem it established that the Metro Defendants departed from their standard procedures for investigation of fatal traffic collisions in the case of Janet Wagner and accorded her special treatment and/or preclude the Metro Defendants from introducing at trial evidence of the Metro Defendants' standard operating procedures for the

investigation of fatal traffic collisions or evidence opposing Plaintiffs' assertion that the Metro Defendants departed from those procedures and accorded Janet Wagner special treatment.

(Sanction Requests for PMK H and 1<sup>st</sup> Req/No. 4 are virtually identical.)

**1ST REQUEST NO. 4:** All fatal traffic collision reports investigated by Defendants during the five years preceding and five years following the preparation of the traffic collision report pertaining to Erin DeLew's death.

Revised 8/15/01: All fatal traffic collision reports investigated by Metro during the years 1996 and 1997. (Revision offered 8/8/01) (revised 8/15/01 per Court order)

Q. ...Traffic investigation reports for an injury or fatal are 10 years, mandatory retention with a permanent file being in Records.

Q. When it says "Permanent File in Records," that means that Metro has, even though the minimum period is 10 years, Metro has decided to keep a permanent record?

A. Yes, there would be a permanent file maintained in Records.

Q. Would you repeat what the category is, please? Traffic --

A. Traffic/citations/incident reports is two years. Traffic/accident investigations for injury or fatal are 10 years with a permanent file in records.

Lang Dep. 20:19-21:7

Q. Ms. Lang, would you tell us how someone in your department would go about locating a filmed traffic collision report, if they had an event number? What would they do?

A. They would request copies of whatever we have under that event number and Records personnel would produce the documents off of the film.

Q. How would the Records person do that? Assuming, I guess, it's on the KAR system, they would go to the reel?

A. If it's on the KAR system, they would go to the computer that is attached to the KAR. They would run up the event number. It would tell them what reel it was on. They would take the reel and hit "print."

Lang Dep. 22:23-23:11

Q. How many additional people can you call upon when needed?

A. I can assign every one of my employees to do any tasks, depending on the need. Those people who are assigned regularly as that part of their duties is about five a day. That's not a question that I can answer. If I needed to, I could apply substantial amounts of personnel.

Q. How many people are under your section?

A. In the Records Bureau, there is 190. If you want it broken down by section --

Q. You're the Records Section Director?

A. Records Bureau.

Q. So all 190 essentially report to you?

A. Right.

Lang Dep. 41:9-23

Q. Approximately how many temporary employees?

A. 20.

Q. So at the peak, 210 employees?

A. Right.

Lang Dep. 43:17-20

Q. Do you know for what period of time a Fatal Traffic Accident Report is retained?

A. As far as I know in Records, it's kept forever. I don't know of anything that's short.

Q. How about Traffic Accident Reports involving injury?

A. Same thing.

Q. Same thing?

A. It gets microfilmed, is my understanding.

Redfairn Dep. 16:22-17:5



**1ST REQUEST NO. 5:**

All DUI arrest reports generated by each individual Defendant during the three years preceding the investigation of Janet Wagner's sobriety at the scene of Erin DeLew's death.

**Revised Per Court Order dated 8/15/01:** All DUI Arrest Reports generated by any named Metro Defendants during 1996 and 1997.]

**METRO DEFENDANTS' VIOLATIONS OF COURT'S ORDER:**

Metro represented that it destroyed DUI Arrest Reports after five years and therefore could not produce reports during the most relevant years i.e. 1991 to 1994. (Rastello Aff. ¶3) Based on this representation, Plaintiffs and the Court narrowed the document request to the years 1996 and 1997. (Rastello Aff. ¶3) Plaintiffs learned during the Rule 30(b)(6) depositions that Metro's representation was false and that Metro retains DUI Arrest Reports for 85 years. (Lang Dep. 20:3-12; Ex. 204) However, Metro never did produce the 1991-1994 reports, even though it could easily have done so. (Rastello Aff. ¶4; Moody Dep. 30:21-31:4; Counterman 194:15-22)

In addition, during the June 13, 2002 hearing, the Magistrate Judge ordered Metro to produce unredacted copies of the DUI Arrest Reports it had produced for the narrowed time period. (Ex. 210, Hearing Trans. 30:5-23, June 13, 2002 #190) However, Metro never did so. (Leffler Aff. ¶6)

Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' standard operating procedures in the investigation of DUI incidents during the 1994 time period to show the departure from such procedures and the special treatment accorded to Mrs. Wagner during the investigation of the vehicular homicide of Erin DeLew.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was calculated to establish Metro's standard operating procedures for the investigation of driving under the influence as of September 1994 and that the Metro Defendants departed from those procedures and accorded Janet Wagner special treatment:

Deem it established that the Metro Defendants departed from their standard procedures for investigation of DUI in the case of Janet Wagner and accorded her special treatment and/or preclude Metro from introducing at trial evidence of the Metro Defendants' standard operating procedures for the investigation of driving under the influence as of September 1994 or evidence opposing Plaintiffs' assertion that the Metro Defendants departed from those procedures and accorded Janet Wagner special treatment.

(Sanction Requests for PMK categories D and I and 1<sup>st</sup> Req/No. 5 are virtually identical.)

**1ST REQUEST NO. 5:** All DUI arrest reports generated by each individual Defendant during the three years preceding the investigation of Janet Wagner's sobriety at the scene of Erin DeLew's death.

Revised 8/15/01: All DUI Arrest Reports generated by any named Metro Defendants during 1996 and 1997. (Revision offered 8/8/01) (revised per Court Order 8/15/01)

Q. Assuming that an officer properly codes a drunk driving arrest as a 409, your people in Communications would input that?

A. Whatever he told us.

Q. Okay. Then theoretically, Information Technologies could run a list of all the 409s that occurred last month, for example?

A. Yes.

Counterman Dep. 194:15-22

Q. For what period of time is the film or fiche maintained?

A. For what category?

Q. Let's say DUI arrest reports.

A. An arrest report would be maintained 85 years or five years after the confirmed death of the individual.

Q. 85 years?

A. Is a retention on an arrest document, an arrest report.

Lang Dep. 20:3-12

Q. Ms. Lang, would you tell us how someone in your department would go about locating a filmed traffic collision report, if they had an event number? What would they do?

A. They would request copies of whatever we have under that event number and Records personnel would produce the documents off of the film.

Q. How would the Records person do that? Assuming, I guess, it's on the KAR system, they would go to the reel?

A. If it's on the KAR system, they would go to the computer that is attached to the KAR. They would run up the event number. It would tell them what reel it was on. They would take the reel and hit "print."

Lang Dep. 22:23-23:11

Q. Did you come to learn that the court ordered unredacted reports to be produced?

A. I'm not clear on what the court ordered with regard to the redactions.

O. Do you know whether or not Metro has produced an unredacted



copy of the 1996 and 1997 Fatal Traffic Collision Reports?

A. The reports that were originally produced unredacted should still be in possession of our attorneys.

Q. As you sit here, you don't know whether or not a copy of those have been made and delivered to Plaintiffs?

A. I don't know.

Moody Dep. 13:14-14:2

Q. It could have been done for the years 1994 and 1995 as well?

A. Had we been instructed to do it for 1994 and '95, I don't know, because to fill -- we're talking about the DUI? Oh, yes, for the DUI requests. I'm sorry. I was thinking you had asked me the same question with regard to H. Yes, we could undertake to do the same process technically and do it for '94 and '95.

Moody Dep. 30:21-31:4

Q. Do you know if, within the description field of the CAD system, if the word "drunk" or "DUI" could be set as a parameter?

A. Yes, it can.

Moody Dep. 36:2-5

Q. For what period of time are DUI Arrest Reports retained?

A. As far as my knowledge goes, it's forever. That's why they're microfiched. They can keep them forever.

Redfairn Dep. 19:17-21



**1ST REQUEST NO. 6:**

All ... documents relating to the investigation by METRO and NHP of injury or fatal traffic collisions involving any law enforcement officer or an immediate family member of a law enforcement officer during the five years preceding and five years following the investigation of Erin DeLew's death.

**Revised Per Court Order dated 12/4/01:** All ... documents relating to the investigation by METRO and NHP of injury or fatal traffic collisions involving any law enforcement officer or an immediate family member of a law enforcement officer during the thirty-month period preceding and the thirty-month period following the investigation of Erin DeLew's death.]

**METRO DEFENDANTS' VIOLATIONS OF COURT'S ORDER:**

Metro initially claimed that it would be too burdensome to identify and produce responsive documents to No. 6. (Rastello Aff. ¶7) The Court rejected this argument in its August 15, 2001 Order, and directed Metro to produce the documents. (Ex. 206, Order dated Aug. 15, 2001 (#100)) Metro moved for reconsideration. In its Motion for Reconsideration, Metro stated that it had identified 55 reports as a result of a department-wide e-mail inquiry, but resisted doing more, again claiming the request was too burdensome. (Metro Motion for Reconsideration at 11-12, Aug. 29, 2001 (#106)) Metro attached the Affidavit of Lt. John Thornton, who explained the steps that would be necessary to produce the requested documents. (Rastello Aff. ¶7) The Court re-affirmed its earlier Order, but narrowed the time period from ten years to five years. (Ex.207, Order dated December 3, 2001 (#124)) When Metro still refused to comply, Plaintiffs filed the Motion for Sanctions that led to the July 15 Order. (Rastello Aff. ¶8)

Despite the plain language of the July 15, 2002 Order, Metro refused to undertake the procedures necessary to identify responsive documents for the shortened time period and did not produce a single report involving any Metro immediate family member in response to the Court's Order. (Rastello Aff. ¶8) Lt. Moody acknowledged that Metro had not undertaken the steps detailed by Lt. Thornton as necessary to identify and produce the requested documents, despite the Court's reduction of the discoverable time period from ten years to five years. (Moody Dep. 87:9-17, 88:6-13, 93:7-10)

Metro employees 200 people in its Records Bureau and that it had ample resources (both human and computer) to identify and produce responsive documents. (Lang Dep. 22:23-23:11, 41:9-23, 43:17-20)

In addition, although Metro earlier had produced approximately 55 redacted reports involving off-duty Metro officers or immediate family members, it failed to produce a copy of the unredacted reports as ordered by the Court during the June 13, 2002 hearing and failed to identify the Metro family member involved

in the collision until after the Rule 30(b)(6) depositions were completed. (Rastello Aff. ¶9; Leffler Aff. ¶17) Consequently, Metro has never disclosed the contact information of persons similarly situated to the DeLew family (*i.e.*, citizens involved in traffic collisions with Metro off-duty officers and their family members), despite the Court's plain orders to do so. (Rastello Aff. ¶8)

Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed any law enforcement officers or immediate family members of same, which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.

#### **APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos.14, 15 17-21, 24-26 are identical.)

**1ST REQUEST NO. 6:** All reports, memoranda, summaries or other documents relating to the investigation by METRO and NHP of injury or fatal traffic collisions involving any law enforcement officer or an immediate family member of a law enforcement officer during the five years preceding and five years following the investigation of Erin DeLew's death. (Revised per Court's Order 12/4/01)

Revised 12/4/01: All reports, memoranda, summaries or other documents relating to the investigation by METRO and NHP of injury or fatal traffic collisions involving any law enforcement officer or an immediate family member of a law enforcement officer during the thirty-month period preceding and the thirty-month period following the investigation of Erin DeLew's death.

Q. How many additional people can you call upon when needed?

A. I can assign every one of my employees to do any tasks, depending on the need. Those people who are assigned regularly as that part of their duties is about five a day. That's not a question that I can answer. If I needed to, I could apply substantial amounts of personnel.

Q. How many people are under your section?

A. In the Records Bureau, there is 190. If you want it broken down by section --

Q. You're the Records Section Director?

A. Records Bureau.

Q. So all 190 essentially report to you?

A. Right.

Lang Dep. 41:9-23

Q. Approximately how many temporary employees?

A. 20.

Q. So at the peak, 210 employees?

A. Right.

Lang Dep. 43:17-20

Q. Lieutenant Thornton said in his affidavit of August 30, 2001, that in order to respond to this particular discovery request, he says, the only way to craft a response to this discovery request would be to identify each officer of LVMPD from 1989 to 1999 and run each name to see if an accident we investigated names them in any capacity. Do you know if that was done?

A. I don't know what he means by that.

Moody Dep. 87:9-17

Q. He stated, personnel would need to pull the names of all immediate family members and a similar search would have to be done. Then Lieutenant Thornton states, a review of every Accident Report generated would need to be reviewed.

A. So every report would have to be read. Every report would have to be pulled and read, that wasn't done.

Moody Dep. 88:6-13

Q. As far as you know, Lieutenant Moody, whatever Lieutenant Thornton meant here, you have no knowledge that that was done?

A. Right.

Moody Dep. 93:7-10

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**2<sup>ND</sup> REQUEST NO. 6:**

All records relating to the pre-employment screening of the individual Defendants...

**METRO DEFENDANTS' VIOLATIONS OF COURT'S ORDER:**

Responsive documents for Defendants Pribyl, Roshak, and Thornton were never produced. Responsive documents for Keller were produced after the Rule 30(b)(6) deposition of the person most knowledgeable regarding the documents. (Leffler Aff. ¶8; Spring Dep. 25:20-22, 26:7-9)

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Costs, including fees, of the Rule 30(b)(6) depositions and of this Motion.



**2ND REQUEST NO. 6:** All records relating to the pre-employment screening of the individual Defendants, including background investigations, polygraph examinations, psychological tests and interviews.

Q. Did you produce Defendant Jerry Keller's background file?

A. I don't believe it was asked for.

Spring Dep. 25:20-22

Q. Were there any requested files that you were unable to find?

A. No.

Spring Dep. 26:7-9



**2<sup>ND</sup> REQUEST NO. 10:**

The watch list and any other lists containing the names of personnel on duty during the various shifts from 6:00 p.m. on September 27, 1994 to and including 5:00 p.m. on September 28, 1994.

**METRO DEFENDANTS' VIOLATIONS OF COURT'S ORDER:**

Metro represented to the Court that it would take 150-200 overtime hours to generate such a list. (Ex. 209, Defendants' Response to Plaintiffs' Second Request for Production of Documents (First Supplement) dated March 18, 2002, at 6:1-13) On August 9, 2002 Metro produced a computer-generated list that took only moments to prepare. (McKee Dep. 63:5-64:11) The delayed production prevented Plaintiffs from identifying key persons on duty on Sept. 27, 1994 (the day of Erin DeLew's death) including the officers who drove Mrs. Wagner to her home (and returned her to the scene) during the fatal traffic investigation.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Costs, including fees, of the Rule 30(b)(6) depositions and of this Motion.

**2ND REQUEST NO. 10:** The watch list and any other lists containing the names of personnel on duty during the various shifts from 6:00 p.m. on September 27, 1994 to and including 5:00 p.m. on September 28, 1994.

Q. I'm going to hand you what's been marked as McKee Exhibit 2, which appears to be an 18-page document entitled "LAS VEGAS METRO POLICE DEPT. CONSOLE SIGN ON/OFF From 09/26/1994 18:00:00:00 through 09/28/1994 18:00," and ask you if you recognize that document.

A. Yes, sir, I do.

Q. What is it?

A. This is a computer-generated list of employees throughout the department that logged into the computer-aided dispatch system between 9/26/94 at 1800 hours, 6 p.m., through 9/28/94 at 1800 hours, actually almost 1700 hours, 7 p.m.

Q. Okay. And this is a document that you asked one of your officers to prepare for you on July 25th?

A. One of my computer operators, yes, sir.

Q. Okay. He did so on that very day?

A. Yes, sir.

Q. Okay. And then he gave it to you?

A. He put it in a thousand miler, sent it to me.

Q. Okay. Then you downloaded it to --

A. No, a thousand miler. He printed it and put it in a thousand miler, an interoffice envelope, and sent it to me.

Q. Oh, I wasn't familiar with that term.

A. Oh, I'm sorry.

Q. Okay. And this type of information has resided in Metro's computer records since September 27, 1994?

A. Since it was created, yes, sir.

McKee Dep. 63:5-64:11



**2<sup>ND</sup> REQUEST NO. 14:**

All documents summarizing, tabulating, or compiling any notice of claims for damages, including the actual notices, made against any individual defendant and any Metro officers alleging certain types of wrongdoing.

**METRO DEFENDANTS' VIOLATIONS OF COURT'S ORDER:**

Even though Lt. Moody made a copy of each Notice of Claim and gave the copies to Metro's counsel (Moody Dep. 51:24-52:17), the Metro Defendants did not produce any of the Notice of Claims requested in No. 14 of the Second Requests and ordered by the Court to be produced in its July 15, 2002 Order. (Leffler Aff. ¶9; Moody Dep. 70:22-71:6, 84:4-17) In fact, the Metro Defendants did not even produce a copy of the only two Notices it identified in its August 9, 2002 Response. (See Leffler Aff. ¶9; Ex. 218, Metro Defendants' Sixth Supplemental Response to Second Requests served Aug. 9, 2002)

Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed by law enforcement officers which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)

**2ND REQUEST NO. 14:** All documents summarizing, tabulating, or compiling any notice of claims for damages, including the actual notices, made (a) against any individual Defendant for any alleged misconduct and (b) against any NHP or METRO officer alleging false reporting, perjury, fraudulent investigation, obstruction of justice, false arrest, concealment, cover-up, conspiracy or equal protection violation from 1990 to the present.

Q. In each case file that has a Notice of Claim or a copy of the civil action complaint, did you make a copy of, in connection with the DeLew case, of the Notice of Claim or the civil action?

A. Yes. The initial complaint that was received?

Q. Yes.

A. Served on the department, yes.

Q. Did you make a copy of the Notice of Claim form?

A. Anything that was served formally on us, it would, relating to that, would be in the file.

Q. Did you give that information to Metro's counsel?

A. Absolutely.

Q. Did you provide the Notice of Claims and the complaint for actions that had been settled as well as those that were open during this time period?

A. Yes.

Moody Dep. 51:24-52:17

Q. Did you produce any of the documents out of the claim file?

A. To my knowledge, we did not, other than the, perhaps the civil claim number. That's all public information and it's as easily acquired by the Plaintiffs in this case as it would be by us through the court.

Q. Did you prepare a privileged log of documents you were withholding?

A. I'm not sure that we did or not.

Moody Dep. 70:22-71:6

Q. Looking at Exhibit Moody 2, you do know that the case files, for example, for the civil rights claims listed on, in the 1995 report, which is Bates labeled 28074 and 28075, that those case files have not been produced?

MR. ANGULO: You're talking about Moody Exhibit 2?

MR. RASTELLO: Yes.

THE WITNESS: That any case files that still exist pertaining to any of the Claimants named in that exhibit have been produced?

BY MR. RASTELLO:

Q. Yes.

A. To my knowledge, they have not been produced.

Moody Dep. 84:4-17





**2<sup>ND</sup> REQUEST NO. 15:**

All documents summarizing, tabulating or compiling the civil lawsuits, actions, or complaints filed (a) against any individual Defendant for any alleged misconduct and (b) against any NHP or METRO officer ... from 1990 to the present.

**METRO DEFENDANTS' VIOLATIONS OF COURT'S ORDER:**

Lt. Moody testified that Metro's computer systems track every civil action filed against any Metro officer from receipt of the complaint through payment or settlement. (Moody Dep. 40:8-41:1, 42:18-43:3, 48:17-49:1, 50:6-14) Lt. Moody testified that a list of civil actions could have been generated from Metro's computer databases. (Moody Dep. 51:24-53:3) Yet, Metro did not produce any list of civil actions responsive to No. 15. (Leffler Aff. ¶10) Instead, the Metro Defendants produced a copy of a publicly available list required of all police agencies by Nevada law, which contains only the claimant's name, the identity of one of the asserted claims, and the amount demanded and paid. (Leffler Aff. ¶10) A sample of the list is attached as Ex. 202 to Plaintiff's Motion. The list does not contain any information about any civil action or civil complaint (or whether one was even filed), or any identifying or contact information about the claimant, his counsel, or any witnesses. Even though Lt. Moody made a copy of each civil complaint for Metro's counsel to produce in this action (Moody Dep. 51:24-52:17), a copy of the civil complaints was not produced in response to either No. 15 or No. 20. (Leffler Aff. ¶10) No. 20 of the Second Request (and the Court's July 15 Order) required production of "All records of the investigations of the citizen or administrative complaints as described in Nos. 13-19 above" (underlining added).

Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed by law enforcement officers which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of

citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)

**2ND REQUEST NO. 15:** All documents summarizing, tabulating or compiling the civil lawsuits, actions, or complaints filed (a) against any individual Defendant for any alleged misconduct and (b) against any NHP or METRO officer alleging false reporting, perjury, fraudulent investigation, obstruction of justice, false arrest, concealment, cover-up, conspiracy or equal protection violation from 1990 to the present.

Q. What's the process? What's the intake process for taking in and documenting and logging these various Notice of Claims?

A. Which category are you referring to? Do you want me to just go down the list?

Q. Sure.

A. Very formalized with -- number one, of course, when we receive a civil complaint, we're operating under a deadline. We immediately create a file. The hard file contains the complaint and a place for the investigative specialist managing that case file to make some notes. The first note is going to be that the complaint was forwarded to counsel for the Police Department in order that an answer could be prepared and response tendered within the deadline, within the time period. And that case file now is entered into our STAR system, which is an automated management system that we use to house that type of information.

Moody Dep. 40:8-41:1

Q. What information do your people put into the STAR system?

A. Depends on the type of complaint. Again, I am not an expert on the STAR system. I do not do data entry. But information, the nature of the complaint, the counsel for the department that will be handling the complaint, the name of the employee involved as a Defendant, the name of the Claimant, and reserve amounts, things like that, standardized reserve amounts that are going to be set aside to address the complaint.

Moody Dep. 42:18-43:3

Q. Then you mentioned that the nature of the complaint is categorized in the STAR system. How is that done?

A. Well, there are a number of different types of descriptions that can be assigned to a case. It's not terribly specific. But generally, we're talking about a wrongful death, for example, or some other Constitutional violation and it will go down as excessive force, wrongful death, false arrest, you know, things of that nature, illegal search.

Moody Dep. 48:17-49:1

Q. In the STAR system, if a claim has progressed to litigation to a civil action, is that information then input?

A. Yes, sir.

Q. What information is input relative to that?

A. I believe you asked that question early on and it's essentially that the Claimant, claim gives some details of the complaint, the Claimant information, the counsel representing the department.

Moody Dep. 50:6-14

Q. In each case file that has a Notice of Claim or a copy of the civil action complaint, did you make a copy of, in connection with the De Lew case, of the Notice of Claim or the civil action?

A. Yes. The initial complaint that was received?

Q. Yes.

A. Served on the department, yes.

Q. Did you make a copy of the Notice of Claim form?

A. Anything that was served formally on us, it would, relating to that, would be in the file.

Q. Did you give that information to Metro's counsel?

A. Absolutely.

Q. Did you provide the Notice of Claims and the complaint for actions that had been settled as well as those that were open during this time period?

A. Yes.

Q. Who determines the reserve amounts when these claims come in?

A. You know, the reserve list is a standardized list that, based on the category or whatever most closely reflects the nature of the complaint. The employee just refers to that list and the reserve amount is entered accordingly.

Q. Could you sort, from the STARS system, a list of those cases that had progressed to court actions or do you know, as you sit here?

A. I believe so.

Moody Dep. 51:24-53:3



**2<sup>ND</sup> REQUEST NO. 17:**

All accident review board records and accident review board reports that mention (a) any individual Defendant or (b) concern any complaint made against any METRO officer....

**METRO DEFENDANTS' VIOLATIONS OF COURT'S ORDER:**

The Metro Defendants did not produce any Accident Review Board Reports. (Moody Dep. 59:22-60:1, 83:15-24, 96:18-97:7) The only documents produced in response to No. 17 of the Second Request were "yearly summaries" of the Accident Review Board Reports, but not the Reports themselves. (Leffler Aff. ¶11)(See Ex. 218, Metro Defendants' Sixth Supplemental Response to Second Requests served Aug. 9, 2002)

Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed by law enforcement officers which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)

**2ND REQUEST NO. 17:** All accident review board records and accident review board reports that mention (a) any individual Defendant or (b) concern any complaint made against any NHP or METRO officer alleging false reporting, perjury, fraudulent investigation, obstruction of justice, false arrest, concealment, cover-up, conspiracy or equal protection violation.

Q. But, as far as you know, no Accident Review Board records were made by your people to be produced to Plaintiffs?

A. Correct, other than printouts I've already referred to.

Moody Dep. 59:22-60:1

Q. Do you know whether or not the Accident Reports and the investigative reports that were associated with those accidents have been produced to the Plaintiffs?

A. Whether the Accident Reports associated with these event numbers -- no, I don't know.

Q. You don't know if they've been produced?

A. I'm not sure if the reports themselves have been pulled and turned over to you. No, I'm not sure they haven't or have been.

Moody Dep. 83:15-24

Q. For example, we know that the investigative files underlying the Notice of Claim case files have not been produced.

A. We would have to go back case-by-case, see which ones, see which files still exist and then answer that question case-by-case.

Q. But as of today, that hasn't been done?

A. Right.

Q. The same is true of the Accident Review Board records?

A. Right. We would have relied on our counsel to necessarily to identify specific files that would have needed to be produced as background information and as comprehensive lists and logs that we've produced for you in this case.

Moody Dep. 96:18-97:7

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**2<sup>ND</sup> REQUEST NO. 18:**

All documents relating to the State of Nevada or Las Vegas Risk Management office or program that mention (a) any individual Defendant or (b) concern any complaint made against any NHP or METRO officer ...

**METRO DEFENDANTS' VIOLATIONS OF COURT'S ORDER:**

The Metro Defendants have not produced any documents from the Risk Manager's office as requested by Plaintiffs and ordered by the Court in its July 15, 2002 Order. (See Ex. 218, Metro Defendants' Sixth Supplemental Response to Second Requests served Aug. 9, 2002) Not a single claim file or investigative file from the Risk Manager's Office was produced, nor was a privilege log of withheld documents produced. (Moody Dep. 70:22-71:6, 84:4-17, 96:18-25). (Leffler Aff. ¶12)

Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed by law enforcement officers which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)

**2ND REQUEST NO. 18:** All documents relating to the State of Nevada or Las Vegas Risk Management office or program that mention (a) any individual Defendant or (b) concern any complaint made against any NHP or METRO officer alleging false reporting, perjury, fraudulent investigation, obstruction of justice, false arrest, concealment, cover-up, conspiracy or equal protection violation.

Q. Did you produce any of the documents out of the claim file?

A. To my knowledge, we did not, other than the, perhaps the civil claim number. That's all public information and it's as easily acquired by the Plaintiffs in this case as it would be by us through the court.

Q. Did you prepare a privileged log of documents you were withholding?

A. I'm not sure that we did or not.

Moody Dep. 70:22-71:6

Q. Looking at Exhibit Moody 2, you do know that the case files, for example, for the civil rights claims listed on, in the 1995 report, which is Bates labeled 28074 and 28075, that those case files have not been produced?

MR. ANGULO: You're talking about Moody Exhibit 2?

MR. RASTELLO: Yes.

THE WITNESS: That any case files that still exist pertaining to any of the Claimants named in that exhibit have been produced?

BY MR. RASTELLO:

Q. Yes.

A. To my knowledge, they have not been produced.

Moody Dep. 84:4-17

Q. For example, we know that the investigative files underlying the Notice of Claim case files have not been produced.

A. We would have to go back case-by-case, see which ones, see which files still exist and then answer that question case-by-case.

Q. But as of today, that hasn't been done?

A. Right.

Moody Dep. 96:18-25



**2<sup>ND</sup> REQUEST NO. 19:**

All citizen or administrative complaints of police misconduct ... from 1990 to present ...related...to allegations of: (1) Investigating traffic and criminal incidents involving ...law enforcement officers and...family members; (2) Inadequately and/or fraudulently investigating claims of...misconduct...; (3) Covering up...wrongful activities ...by false reporting, false investigating, perjury, obstruction of justice or dishonesty; (4) Refusing to supervise, reprimand and/or discipline...officers who engage in misconduct; (5) Failing to administer adequate and standard field sobriety tests to...officers or their ...family members suspected of DUI; (6) Failing to enforce the law, rules, regulations and procedures when an investigation is conducted of a... officer's misconduct...; and (7) Inadequately training and supervising officers with respect to the investigation of misconduct by...officers or...family members.

**METRO DEFENDANTS' VIOLATIONS OF COURT'S ORDER:**

Metro did not produce a single responsive document prior to August 9, 2002. (See Ex. 218, Metro Defendants' Sixth Supplemental Response to Second Requests served Aug. 9, 2002) Rather, on July 24, 2002, Metro served by mail the cryptic and uninformative IAB logs and advised Plaintiffs to review the logs and identify responsive documents, even though it is not possible to do so given the nature of the cryptic logs. (Rastello Aff. ¶¶10-11; Flynn Dep. 66:16-67:11, Moody Dep. 78:16-79:1)) Metro did not review any of its IAB files to identify responsive documents. (Moody Dep. 78:16-79:1) Metro did not begin producing responsive documents until August 27, 2002, well after the August 9, 2002 deadline and after most of the PMK depositions had been taken. ((Rastello Aff. ¶13; Leffler Aff. ¶13)

Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed any law enforcement officers which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of

citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)

**2ND REQUEST NO. 19:** All citizen or administrative complaints of police misconduct falling within the categories below from 1990 to present which are related, directly or indirectly, to allegations of: (1) Investigating traffic and criminal incidents involving fellow law enforcement officers and their immediate family members; (2) Inadequately and/or fraudulently investigating allegations of criminal and civil misconduct involving fellow law enforcement officers and their immediate family members; (3) Covering up the criminal and/or wrongful activities of fellow law enforcement officers and their immediate family members by false reporting, false investigating, perjury, obstruction of justice or dishonesty; (4) Refusing to supervise, reprimand and/or discipline law enforcement officers who engage in misconduct; (5) Failing to administer adequate and standard field sobriety tests to fellow law enforcement officers or their immediate family members suspected of driving under the influence; (6) Failing to enforce the law, rules, regulations and procedures when an investigation is conducted of a fellow law enforcement officer's misconduct, or a relative of a fellow police officer; and (7) Inadequately training and supervising police officers with respect to the investigation of misconduct by fellow law enforcement officers or their immediate family members.

Q. So you would have to review the brief of complaint to see if those allegations were made?

A. If you wanted me to look for every one of those, yes.

Q. For example here, on Flynn Exhibit 2, page 27805, on February 13, 1995, IAB number 950206, it states, CRS 510.2, Subsection G-1, conduct unbecoming an employee.

A. Correct.

Q. That would be difficult to know --

A. It is an extremely broad charge. It's based on a Civil Service rule. There is about that many things you can do for conduct unbecoming.

Q. So you would have to look at the complaint?

A. To know what exactly it is. It could be music too loud at a party that your neighbors are complaining about, all the way to a criminal act.

Q. How about this one, 950209, standards of conduct, criminal laws. Can you tell whether that would fall within one of the categories of letter C?

A. I cannot.

Flynn Dep. 66:16-67:11

Q. Did you produce any of the documents out of the claim file?

A. To my knowledge, we did not, other than the, perhaps the civil claim number. That's all public information and it's as easily acquired by the Plaintiffs in this case as it would be by us through the court.

Q. Did you prepare a privileged log of documents you were withholding?

A. I'm not sure that we did or not.

Moody Dep. 70:22-71:6

Q. ...Do you know if anyone from Metro or anyone from your side of the case took those logs and asked to see the Internal Affairs Bureau file where the description of the claim wasn't necessarily clear enough to determine whether or not it fell within the request?

A. I don't -- I'm not sure I understand the question completely. But I don't think I know whether, who, if anyone, looked at each individual case file that was examined for purposes of production to you in this case.

Moody Dep. 78:16-79:1

Q. Looking at Exhibit Moody 2, you do know that the case files, for example, for the civil rights claims listed on, in the 1995 report, which is Bates labeled 28074 and 28075, that those case files have not been produced?

MR. ANGULO: You're talking about Moody Exhibit 2?

MR. RASTELLO: Yes.

THE WITNESS: That any case files that still exist pertaining to any of the Claimants named in that exhibit have been produced?

BY MR. RASTELLO:

Q. Yes.

A. To my knowledge, they have not been produced.

Moody Dep. 84:4-17

Q. For example, we know that the investigative files underlying the Notice of Claim case files have not been produced.

A. We would have to go back case-by-case, see which ones, see which files still exist and then answer that question case-by-case.

Q. But as of today, that hasn't been done?

A. Right.

Moody Dep. 96:18-25





**2<sup>ND</sup> REQUEST NO. 20:**

All records of the investigations of the citizen or administrative complaints as described in Nos. 13-19 above.

**METRO DEFENDANTS' VIOLATIONS OF COURT'S ORDER:**

Metro did not produce a single responsive document prior to August 9, 2002. (See Ex. 218, Metro Defendants' Sixth Supplemental Response to Second Requests served Aug. 9, 2002) Rather, on July 24, 2002, Metro served by mail the cryptic and uninformative IAB logs and advised Plaintiffs to review the logs and identify responsive documents, even though it is not possible to do so given the nature of the cryptic logs. (Rastello Aff. ¶¶10-11; Flynn Dep. 66:16-67:11, Moody Dep. 78:16-79:1)) Metro did not review any of its IAB files to identify responsive documents. (Moody Dep. 78:16-79:1) Metro did not begin producing responsive documents until August 27, 2002, well after the August 9, 2002 deadline and after most of the PMK depositions had been taken. (Rastello Aff. ¶13; Leffler Aff. ¶14)

Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed any law enforcement officers which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos.14, 15 17-21, 24-26 are identical.)

**2ND REQUEST NO. 20:** All records of the investigations of the citizen or administrative complaints as described in Nos. 13-19 above.

Q. From reviewing those logs, would you agree that, from reviewing those logs by themselves, it was not always possible or most times not possible to tell whether or not the complaint, allegations, included claims for false reporting, perjury, fraudulent investigation, false arrest, concealment, cover-up or conspiracy?

MR. ANGULO: Objection. Calls for speculation.

THE WITNESS: As I said earlier, it gives a general description. I do recall seeing some false arrest allegations. That's a typical allegation -- not typical -- but it comes up more than occasionally. It's a typical complaint that comes up. In terms of the others, you would have to look at the case....

Flynn Dep. 20:1-15

Q. A couple questions: Would it be difficult to determine whether or not the complaints listed in Exhibit 2 fell within one of those categories of Exhibit 1's Category C without actually looking at least at the brief of complaint?

A. I think what I said earlier, I go back to that. I know we talked about conspiracy. In a fraudulent investigation or concealment, you wouldn't find those without reading those. I recall also, our false report or truthfulness would probably be a summary of a complaint. But the other ones mentioned on the list, I don't recall seeing.

Q. So you would have to review the brief of complaint to see if those allegations were made?

A. If you wanted me to look for every one of those, yes.

Q. For example here, on Flynn Exhibit 2, page 27805, on February 13, 1995, IAB number 950206, it states, CRS 510.2, Subsection G-1, conduct unbecoming an employee.

A. Correct.

Q. That would be difficult to know --

A. It is an extremely broad charge. It's based on a Civil Service rule. There is about that many things you can do for conduct unbecoming.

Q. So you would have to look at the complaint?

A. To know what exactly it is. It could be music too loud at a party that your neighbors are complaining about, all the way to a criminal act.

Q. How about this one, 950209, standards of conduct, criminal laws. Can you tell whether that would fall within one of the categories of letter C?

A. I cannot.

Flynn Dep. 66:4-67:11

Q. ...Do you know if anyone from Metro or anyone from your side of the case took those logs and asked to see the Internal Affairs Bureau file where the description of the claim wasn't necessarily clear enough to determine whether or not it fell within the request?

A. I don't -- I'm not sure I understand the question completely. But I don't think I know whether, who, if anyone, looked at each individual case file that was examined for purposes of production to you in this case.

Moody Dep. 78:16-79:1



**2ND REQUEST NO. 21:**

All documents such as management audits relating to the evaluation or assessments, whether internal or external, of NHP's or METRO's investigation of police misconduct from 1990 to the present.

**METRO DEFENDANTS' VIOLATIONS OF COURT'S ORDER:**

On July 24, 2002, Metro produced three Quality Assurance Bureau audits of the Internal Affairs Bureau dated April 1990, June 1992, and October 2000. During the 30(b)(6)/PMK depositions, Plaintiffs discovered that there were several additional reports not yet produced. (Flynn Dep. 25:24-26:15)

On September 19, 2002, after the 30(b)(6)/PMK depositions were completed, Metro produced additional Staff Inspection Reports of the Internal Affairs Bureau for 1997 and 1999. Metro never produced the annual inspection reports for the other years (1991, 1993, 1994, 1995, 1996, 1998 and 2001). (Leffler Aff. ¶15)

Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed by law enforcement officers which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos.14, 15 17-21, 24-26 are identical.)

**2ND REQUEST NO. 21:** All documents such as management audits relating to the evaluation or assessments, whether internal or external, of NHP's or METRO's investigation of police misconduct from 1990 to the present.

Q. Were you able to review the Annual Bureau Inspections for Internal Affairs from 1990 to the present?

A. I know I looked at two of them.

Q. Okay. But there would have been maybe 10 or 11?

A. If they did what they were supposed to do, there would have been one done every year.

Q. Did you make an inquiry as to whether or not one was done each year?

A. No, sir.

Q. Do you have a belief as to whether or not one was done each year?

A. I would believe that the Annual Bureau Inspection done by the Bureau Commander would have been done every year, especially coming from Internal Affairs.

Flynn Dep. 25:24-26:15





**2ND REQUEST NO. 24:**

All pre-disciplinary hearing records and disciplinary hearing records (including tapes and transcripts) relating to complaints made (a) against any individual Defendant and (b) against any NHP or METRO officer ... from 1990 to the present.

**METRO DEFENDANTS' VIOLATIONS OF COURT'S ORDER:**

Metro did not produce a single responsive document. (Leffler Aff. ¶16; Ex. 218, Metro Defendants' Sixth Supplemental Response to Second Requests served Aug. 9, 2002)

Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed by law enforcement officers which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)

1. The term "family" shall mean...

2. The term "family" shall mean...

3.

4. The term "family" shall mean...

5. The term "family" shall mean...

**2ND REQUEST NO. 25:**

All traffic collision reports related to incidents involving any individual defendants or their immediate family members investigated by NHP or Metro.

**METRO DEFENDANTS' VIOLATIONS OF COURT'S ORDER:**

Metro did not produce any additional documents after the Court issued its July 15, 2002 Order. Unredacted copies of the 55 Traffic Accident Reports involving immediate family members of Metro officers were not produced. (Leffler Aff. ¶17)

Lt. Moody acknowledged that the steps Lt. Thornton identified as necessary to identify and produce the requested documents had not been undertaken, despite the Court's reduction of the discoverable time period from ten years to five years. (Moody Dep. 87:9-17, 88:6-13, 93:7-10) As noted above, the Metro Defendants did not produce unredacted copies of the 55 reports identified via the e-mail inquiry, in direct violation of the Court's express order to do so. (Ex. 210, June 13, 2002 Hearing Transcript at 17-18 (#190); Leffler Aff. ¶17) Consequently, Metro has never disclosed the contact information of persons similarly situated to the DeLew family (*i.e.*, citizens involved in traffic collisions with Metro off-duty officers and their family members), despite the Court's plain orders to do so. (Rastello Aff. ¶8)

Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed by law enforcement officers or immediate family members of same, which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and

constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)

**2ND REQUEST NO. 25:** All traffic collision reports related to incidents involving any individual Defendant or their immediate family members investigated by NHP or Metro.

Q. Lieutenant Thornton said in his affidavit of August 30, 2001, that in order to respond to this particular discovery request, he says, the only way to craft a response to this discovery request would be to identify each officer of LVMPD from 1989 to 1999 and run each name to see if an accident we investigated names them in any capacity. Do you know if that was done?

A. I don't know what he means by that.

Moody Dep. 87:9-17

Q. He stated, personnel would need to pull the names of all immediate family members and a similar search would have to be done. Then Lieutenant Thornton states, a review of every Accident Report generated would need to be reviewed.

A. So every report would have to be read. Every report would have to be pulled and read, that wasn't done.

Moody Dep. 88:6-13

Q. As far as you know, Lieutenant Moody, whatever Lieutenant Thornton meant here, you have no knowledge that that was done?

A. Right.

Moody Dep. 93:7-10

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**2ND REQUEST NO. 26:**

All DUI arrest reports related to incidents involving any individual defendants or their immediate family members investigated by NHP or Metro.

**METRO DEFENDANTS' VIOLATIONS OF COURT'S ORDER:**

The Metro Defendants did not identify or produce any DUI reports for any Metro Defendant or immediate family member of a Metro Defendant. (Leffler Aff. ¶18) Metro had the computer capability to search for such DUI reports, but did not do so. (Counterman Dep. 193:14-19, Moody Dep. 36:2-5, 106:4-107:6, 107:19-108:12)

Consequently, Plaintiffs were deprived material evidence regarding the Metro Defendants' investigations of alleged unlawful conduct committed by law enforcement officers or immediate family members of same, which was needed to establish Plaintiffs' theory that Metro has an unspoken custom and policy of protecting one another from civil and criminal liability and that such customs and policies were a moving force behind the alleged constitutional violations and constitute deliberate indifference to the rights of citizens subjected to those customs and policies.

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Because this discovery was propounded to prove Metro's customs and practices of protecting Metro officers and their family members involved in traffic and criminal incidents in deliberate indifference to the rights of citizens, and that such customs and practices were the cause or moving force of the alleged constitutional violations:

Deem it established for the purposes of Plaintiffs' municipal liability claim that Metro's policies and customs, as identified in Plaintiffs' Amended Complaint, were a moving force or cause of the alleged constitutional violations and constitute deliberate indifference to the constitutional rights of citizens subjected to them.

In the alternative, prohibit Metro from offering evidence at trial opposing Plaintiffs' municipal liability claim.

(Sanctions Requests for PMK categories A, C, E, K, L, M, O and P; 1<sup>st</sup> Req/Nos. 3 and 6; and 2<sup>nd</sup> Req/Nos. 14, 15 17-21, 24-26 are identical.)



**2ND REQUEST NO. 26:** All DUI arrest reports related to incidents involving any individual Defendant or their immediate family members investigated by NHP or Metro.

Q. So a drunk driver is 409?

A. That's correct.

Q. So theoretically, one could put in the CAD system and run a report or Information Technology could and obtain the 409 reports?

A. If the CAD event had 409 in it.

Counterman Dep. 193:14-19

Q. Do you know if, within the description field of the CAD system, if the word "drunk" or "DUI" could be set as a parameter?

A. Yes, it can.

Moody Dep. 36:2-5

Q. Request No. 26 requests, "All DUI reports related to incidents involving any individual Defendant or their immediate family members investigated by NHP or Metro."

BY MR. RASTELLO:

Q. Do you know if the names of the 10 or 11 individual Defendants were taken and a computer report generated or searched to see if any of them had been involved in DUIs?

A. If any had been involved in DUIs, IAB would have been the repository for those investigations and those names were searched in IAB.

Q. But it wasn't done, other than producing the IAB records -- which incidentally, many are purged after two years, correct?

A. I don't know what the purge is on IAB records.

Q. So in terms of using the computer or the CAD system, that wasn't utilized to respond to this request?

A. Not to my knowledge. It wouldn't have been used, to utilize it. I don't know what role it could have played in it at all.

Moody Dep. 106:4-107:6

Q. Does SCOPE contain information regarding the identity of arrestees?

MR. ANGULO: Objection to this area of inquiry. It goes beyond his scope as a PMK.

THE WITNESS: When people are arrested -- things have changed over the years. SCOPE is not a, SCOPE is used by the Police Department, but not maintained and controlled by the Police Department. If a person is arrested, then a record of that arrest would be entered into SCOPE. But again, you have to have the person's name and other identifiers in order to pull up that individual record.

BY MR. RASTELLO:

Q. But you can search by name?

A. You can search by name of arrestees if you had it.

Q. If we had the name of individual Defendants and their spouses, we could search SCOPE or LRMS and see if there were any arrests?

A. I suppose that could be done, yeah.

Moody Dep. 107:19-108:12



**2<sup>ND</sup> REQUEST NO. 32:**

A list of all documents withheld on privilege grounds.

**METRO DEFENDANTS' VIOLATIONS OF COURT'S ORDER:**

The Metro Defendants withheld responsive documents such as the Risk Manager's claim files and investigative files (Moody Dep. 70:22-71:6, 84:4-17, 96:18-25), but did not produce a privilege log. (Leffler Aff. ¶19)

**APPROPRIATE SANCTION FOR VIOLATIONS:**

Costs, including fees, of the Rule 30(b)(6) depositions and of this Motion.

**2ND REQUEST NO. 32:** A list of any and all documents withheld by Defendants on the grounds of privilege, including the names of the author and recipient, date, and general subject matter of the allegedly privileged document.

Q. Did you produce any of the documents out of the claim file?

A. To my knowledge, we did not, other than the, perhaps the civil claim number. That's all public information and it's as easily acquired by the Plaintiffs in this case as it would be by us through the court.

Q. Did you prepare a privileged log of documents you were withholding?

A. I'm not sure that we did or not.

Moody Dep. 70:22-71:6

Q. Looking at Exhibit Moody 2, you do know that the case files, for example, for the civil rights claims listed on, in the 1995 report, which is Bates labeled 28074 and 28075, that those case files have not been produced?

MR. ANGULO: You're talking about Moody Exhibit 2?

MR. RASTELLO: Yes.

THE WITNESS: That any case files that still exist pertaining to any of the Claimants named in that exhibit have been produced?

BY MR. RASTELLO:

Q. Yes.

A. To my knowledge, they have not been produced.

Moody Dep. 84:4-17

Q. For example, we know that the investigative files underlying the Notice of Claim case files have not been produced.

A. We would have to go back case-by-case, see which ones, see which files still exist and then answer that question case-by-case.

Q. But as of today, that hasn't been done?

A. Right.

Moody Dep. 96:18-25